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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 861

FREDERICK T. ZUBER, ET AL.,
Petitioners,

v.

RUSSELL ALLEN, ET AL.,
Respondents.

No. 1076

CLIFFORD M. HARDIN, SECRETARY OF AGRICULTURE,
Petitioner,

v.

RUSSELL ALLEN, ET AL.,
Respondents.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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From the Findings, 14 F.R. 7085 Promulgating the Springfield, Mass. Federal Milk Order, Nov. 23, 1949

• • • • • • • • • • •

• • • The evidence in this record shows the need for Federal regulation of all of the sources of milk supplies for the Springfield market in order to give Massachusetts producers who are now supplying the market an opportunity to retain the market on an equal basis with out-of-state producers. Any delay to study possible alternatives as suggested by the excepters threatens certain producers with the loss of their market with resulting unstable marketing conditions.

• • • • • • • • • • •

Producers supplying milk to the Springfield market are located in Massachusetts, Vermont, New York, New Hampshire and Connecticut. Witnesses estimated the number of producers outside the state of Massachusetts from 30 to 40 percent of the total number supplying the market. Several handlers who do business in Springfield engage in the milk business also in adjacent states.

• • • • • • • • • • •

(b) Marketing conditions in the Springfield area indicate that the issuance of a marketing order such as that set forth herein will tend to effectuate the declared policy of the act with respect to milk produced for the Springfield market.

The record shows that conditions exist in the Springfield market which have resulted in a loss of market for several producers. These conditions must be remedied in order to establish and maintain such orderly marketing conditions as will establish prices to producers for milk delivered to the Springfield market that reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and milk products in the marketing area and which will insure a

sufficient quantity of pure and wholesome milk and be in the public interest.

The unsettling conditions which are disrupting the Springfield market result from the opportunity on the part of milk handlers to purchase milk from producers outside Massachusetts on a wholly unregulated price basis whereas the handlers who purchase milk from Massachusetts producers are required to make payments to producers in accordance with a classified price plan enforced by the Massachusetts Milk Control Board. The classified price plan in the Springfield market is similar to that in use in several New England markets. Class I milk, principally fluid milk and milk drinks sold in bottles, is priced relatively higher than milk for all other uses which is Class II.

Handlers purchasing milk under the regulations of the Massachusetts Milk Control Board are required to pay Massachusetts producers delivering milk to their plants these prices for the quantities of milk utilized in such classes. Handlers buying milk out of State are subject to no governmental price regulation and purchase milk at a price competitive with the prices paid to producers in those areas for all milk. The level of the competitive price is dominated by either the uniform price established for producers delivering milk to plants regulated by the New York Federal milk order or the Boston Federal milk order or both. The uniform prices established under the Boston and New York Federal milk orders reflect the average percentage of Class I and of Class II in each of these markets. To the extent that any handler in the Springfield area has sales of Class I milk which give him a higher utilization of Class I milk than the average for either the New York or Boston markets, that handler can purchase milk for such Class I sales at the uniform blend price paid producers in the Boston and New York markets for all milk. The evidence in this record indicates that handlers are aware of this opportunity, that some handlers have

acquired milk on this flat price basis and that at least one handler intends to expand this type of buying in preference to purchasing milk from Massachusetts producers.

The advantage accruing to a handler purchasing milk outside the State of Massachusetts has increased in recent months as the uniform blend prices in the New York and Boston markets have dropped relative to the Class I price in each of these markets and in the Springfield market. The lower uniform prices result from substantial declines in excess milk values and in an increase in the quantity of milk utilized in excess classes.

In addition to the disturbing influence of out-of-state milk in the Springfield market, the lack of a uniform marketwide price plan for all producers supplying the market is a disrupting factor. The range in prices paid by 16 large handlers in the Springfield market to producers per hundredweight of milk testing 3.7 percent butterfat was, delivered at city plants, from $5.40 to $6.326 in June 1948 and from $6.05 to $7.005 in November 1948. In May 1949 the range in prices handlers paid producers in that region was from a low of $4.2162 to a high of $5.8177 per hundredweight of milk testing 3.7 percent butterfat.

The lack of price regulation effective with respect to all of the sources of fluid milk for the Springfield market and the absence of a uniform pricing method are contributing to the growth of an unstable milk market in this area. A marketing order is needed in the area to assure producers of a market for their milk at reasonable and uniform prices.

* * * * * * * * * *

The sources of milk supply for the various cities and towns in the proposed marketing area overlap and are intermingled to such an extent that the general supply area may be considered as one milkshed for the entire marketing area. In many cases handlers receive milk at a plant supplying several of the towns in the marketing area.

* * * * * * * * * *

The supply area for the Springfield market overlaps with the supply areas of other markets. * * *

* * * * * * * * * *

(6) *Payments to producers.* The percentage of milk utilized by individual handlers in Class I varies so widely that prices to producers have differed under an individual handler type pool by over $1.00 per hundredweight. Provision should be made for a market-wide type of pool in order that all producers delivering milk to all handlers may receive a uniform price for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered. This method of paying producers will require a producer-settlement fund for making adjustments in payments by handlers so that the total sum paid by each handler shall equal the value of milk received by him and utilized in the classes established by the proposed marketing agreement and order.

* * * * * * * * * *

Most of the dairy farms in Massachusetts are close to urban centers. This probably explains why prices to Massachusetts farmers for milk sold wholesale average considerably more than the prices paid to Vermont farmers. This difference cannot be attributed to transportation cost alone. The many opportunities for dairymen to market their own milk directly influence the price which they demand for their product.

* * * * * * * * * *

Certain producers located outside the proposed differential area claimed that they should receive differential payments because they had been supplying the Springfield market for a number of years and they had received the Springfield price less a hauling charge. Some of these producers testified that they received prices approximately equal to the Boston blend prices at nearby country points. Other producers did testify that they were currently receiving a price which was about 50 cents over the competitive

price in their territory. A price difference of that amount cannot be expected to be maintained in a period of adequate milk supplies.

* * * * * * * * * * *

From Order Regulating the Handling of Milk in the Springfield, Massachusetts, Marketing Area

(e) *Location differentials.* The payments to be made to producers by handlers pursuant to subparagraph (1) of paragraph (b) of this section shall be subject to the Class I price differentials applicable pursuant to § 996.7 (c), and to further differentials as follows:

(1) With respect to milk delivered by a producer whose farm is located in any of the following cities or towns, there shall be added 23 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to § 996.7 (a) and (c) which is effective at the plant to which such milk is delivered, in which event there shall be added an amount which will give as a result such price:

Massachusetts: Becket, Florida, Hinsdale, Otis, Peru, Sandisfield, Savoy, Washington, and Windsor;

New Hampshire: Chesterfield and Westmoreland;

Vermont: Brattleboro, Dover, Dummerston, Marlboro, Newfane, Putney, and Wilmington.

(2) With respect to milk delivered by a producer whose farm is located in Franklin, Hampshire, Hampden, or Worcester Counties in Massachusetts or in any of the following cities or towns, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to § 996.7 (a) and (c) which is effective at the plant to which such milk is delivered, in which event there shall be added an amount which will give as a result such price:

* * * * * * * * * * *

From the Secretary's Decision, 14 F.R. 7097 Promulgating the Milk Order for Worcester, Mass. Area, Nov. 23, 1949

* * * * * * * * * * *

* * * The evidence in this record shows the need for Federal regulation of all of the sources of milk supplies for the Worcester market in order to give Massachusetts producers who are now supplying the market an opportunity to retain the market on an equal basis with out-of-state producers. Any delay to study possible alternatives as suggested by the excepters threatens certain producers with the loss of their market with resulting unstable marketing conditions.

* * * * * * * * * * *

Producers supplying milk to the Worcester market are located principally in Massachusetts, Vermont and New York.

* * * * * * * * * * *

The record shows that conditions exist in the Worcester market which permit handlers to purchase milk for fluid use at substantially different prices. These conditions must be remedied in order to establish and maintain such orderly marketing conditions as will establish prices to producers for milk delivered to the Worcester market that reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and milk products in the marketing area and which will insure a sufficient quantity of pure and wholesome milk and be in the public interest.

The unsettling conditions which are disrupting the Worcester market result from the opportunity on the part of milk handlers to purchase milk from producers outside Massachusetts on a wholly unregulated price basis, whereas the handlers who purchase milk from Massachusetts producers are required to make payments to producers in accordance with a classified price plan enforced by the Massachusetts Milk Control Board. The classified price

plan in the Worcester market is similar to that in use in several New England markets. Class I milk, principally fluid milk and milk drinks sold in bottles, is priced relatively higher than milk for all other uses which is Class II.

Handlers purchasing milk under the regulations of the Massachusetts Milk Control Board are required to pay Massachusetts producers delivering milk to their plants these prices for the quantities of milk utilized in such classes. Handlers buying milk out of State are subject to no governmental price regulation and purchase milk at a price competitive with the prices paid to producers in those areas for all milk. The level of the competitive price is dominated by either the uniform price established for producers delivering milk to plants regulated by the New York Federal milk order or the Boston Federal milk order or both. The uniform prices established under the Boston and New York Federal milk orders reflect the average percentage of Class I and of Class II in each of these markets. To the extent that any handler in the Worcester area has sales of Class I milk which give him a higher utilization of Class I milk than the average for either the New York or Boston markets, that handler can purchase milk from producers outside Massachusetts for such Class I sales at the uniform blend price paid producers in the Boston and New York markets for all milk. The evidence in this record indicates that handlers are aware of this opportunity, that some handlers have acquired milk on this flat price basis and that at least one handler intends to expand this type of buying in preference to purchasing milk from Massachusetts producers.

The advantage accruing to a handler purchasing milk outside the state of Massachusetts has increased in recent months as the uniform blend prices in the New York and Boston markets have dropped relative to the Class I price in each of these markets and in the Worcester market. The lower uniform prices result from substantial declines in

excess milk values and in an increase in the quantity of milk utilized in excess classes.

In addition to the disturbing influence of out-of-State milk in the Worcester market, the lack of a uniform market-wide price plan for all producers supplying the market is a disrupting factor. In May 1949 prices paid to producers delivering to different handlers varied as much as $1.24 per hundredweight in this area for milk of basic 3.7 percent butterfat content.

The lack of price regulation effective with respect to all of the sources of fluid milk for the Worcester market and the absence of a uniform market-wide pricing method are contributing to the growth of an unstable milk market in this area. A marketing order is needed in the area to assure producers of a market for their milk at reasonable and uniform prices.

* * * * * * * * * *

The sources of milk supply for the various cities and towns in the proposed marketing area overlap and are intermingled to such an extent that the general supply area may be considered as one milkshed for the entire marketing area. In many cases handlers receive milk at a plant supplying several of the towns in the marketing area.

* * * * * * * * * *

(5) *Class prices.* Class prices for the Worcester market should be established on a formula basis similar to that under which class prices are determined for the Boston market. The Boston and Worcester milk markets are so interrelated that a close correlation of price changes is necessary to maintain stable market conditions. Boston is the larger market and therefore the dominant one in effecting price changes. The milksheds of these two markets overlap so that there is opportunity for producers to shift their supply from one market to the other if substantially different prices are offered. The Worcester

market draws milk directly from plants at which milk is priced under the Boston milk order. Careful alignment of prices in the two markets is necessary to maintain equal cost of milk to handlers for milk used similarly.

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(6) *Payments to producers.* The percentage of milk utilized by individual handlers in Class I varies so widely that prices to producers have differed under an individual handler type pool by over $1.00 per hundredweight. Provision should be made for a market-wide type of pool in order that all producers delivering milk to all handlers may receive a uniform minimum price for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered. This method of paying producers will require a producer-settlement fund for making adjustments in payments by handlers so that the total sum paid by each handler shall equal the value of milk received by him and utilized in the classes established by the proposed mar-
posed the marketing order (sic).

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Most of the dairy farms in Massachusetts are close to urban centers. This probably explains why prices to Massachusetts farmers for milk sold wholesale average considerably more than the prices paid to Vermont farmers. This difference cannot be attributed to transportation cost alone. The many opportunities for dairymen to market their own milk directly influence the price which they demand for their product.

• • • • • • • • • • •

(e) *Location differentials.* The payments to be made to producers by handlers pursuant to subparagraph (1) of paragraph (b) of this section shall be subject to the Class I price applicable pursuant to § 999.7 (c), and to further differentials as follows:

With respect to milk delivered by a producer whose farm is located in Franklin, Hampshire, Hampden, Worcester, Middlesex, or Norfolk counties in Massachusetts, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to § 999.7 (a) and (c) which is effective at the plant to which such milk is delivered in which event there shall be added an amount which will give as a result such price.

From the Secretary's Decision, 23 F.R. 8225 Promulgating the Southeastern Milk Order, Oct. 24, 1958

• • • • • • • • • • •

The Southeastern New England market is an interstate market encompassing all of the State of Rhode Island and a substantial area in Southeastern Massachusetts. Within this market there is a substantial and continuing interstate commerce, both in the procurement of milk and in the sale of fluid milk and its products.

• • • • • • • • • • •

More than one-third of the fluid requirements for the Southeastern New England area originates from sources outside the States of Massachusetts, Connecticut and Rhode Island. Much of the upcountry milk is assembled and received at country plants in Vermont and New Hampshire and is then transported to the Southeastern market for processing and distribution. Additional quantities are handled by bulk farm tank pick-up and moved directly from farms in northern New England to plants in the local market.

• • • • • • • • • • •

The situation in both Fall River and New Bedford has continued to deteriorate as handlers, seeking to avail themselves of milk supplies at the most advantageous price, have tended to look to upcountry unregulated supplies which are generally available at a price comparable with the Bos-

ton blended price, which on a year-round basis reflects approximately 55 percent utilization in Class I. As a result local producers have had difficulties in maintaining regular outlets for their production. This condition is most serious in the Fall River market where the several associations of producers whose members are the predominant suppliers of the market have a substantial volume of milk which is not accepted by handlers. Much of this milk is sold at manufacturing milk prices even though the local milk supply is inadequate to meet market demands.

Producers who are members of New Bedford Milk Producers Association, the principal supplier of local handlers in the New Bedford area, are in the same situation as that of regular Fall River producers. The same pressures which have led to a loss of market for many local Fall River producers are applicable to the New Bedford area. Pending consideration of Federal regulation has no doubt forestalled substantial supply changes by local handlers thus far. However, it is likely that if no action is taken handlers will seek lower priced unregulated milk supplies.

The situation in the Rhode Island part of the market is substantially similar to that in the Fall River-New Bedford area. Early in 1951 the association representing a large segment of the registered Rhode Island producers requested a hearing to consider a Federal order for that market because of the then existent market disorder. On the basis of the facts presented at that hearing it was recommended that an order be issued. However, following that decision the association negotiated a settlement with local handlers which minimized the effect of the disorder and accordingly the association asked that the order not be issued.

The increase in available milk supplies generally and the fact that milk is readily available from upcountry sources at prices approximating the Boston blend has provided a strong incentive for handlers to drop local producers in favor of cheaper sources of supply.

Less than one-third of the fluid requirements of Rhode Island dealers are supplied by Rhode Island dairy farmers. An additional forty-five percent is supplied by dairy farmers located in nearby Massachusetts and Connecticut and the remainder is secured from other sources, primarily from the States of Vermont and New York. Several of the larger handlers in the market customarily have secured a lesser proportion of their necessary supplies from local producers than have other handlers. The buying advantage that these handlers have had on their purchases of outside milk has prompted other handlers to drop local producers in favor of sources of supply at upcountry points also.

While the record does not reveal the specific prices at which all of such milk has been purchased it does show that one of the larger handlers in the market secured milk in the month of December 1957 from his unregulated plants at Benson and Whiting, Vermont at a cost of $5.384 which compares with the local city plant Class I price at Providence of $7.00. Even when handling and transportation are considered it is evident that the buying advantage in using unregulated milk deters the use of local milk.

Relatively large quantities of local producer milk were dropped during the latter months of 1957 and early 1958; in some cases entire pickup routes were dropped at one time. The burden of handling the homeless milk in the market has rested with the local producer cooperatives whose members are involved.

The Rhode Island Milk Control Board in the latter part of 1957 initiated an allocation program which was intended to assure a market for local producers and to equalize the percentage utilization of local and outside milk as among handlers. Because of the interstate character of the market handler participation was necessarily voluntary and, while the program has resulted in some redistribution of producers among participating handlers, it has not been

effective in restoring market stability. Unregulated, lower-priced milk continues to move into the market in even greater quantities than before the allocation scheme was initiated.

Registered Rhode Island producers have enjoyed a preferential market over an extended period of years. The allocation program and the procedure employed by the responsible officials of the State in issuing permits for importation of nonregistered milk have tended to maintain such preferential market to the detriment of other dairy farmers whose production is an essential part of the market supply.

Proponents presented an analysis of the annual statistics of the Rhode Island Milk Control Board which purported to show that returns to registered producers reflected all the Class II utilization for the market. While the form of the annual statistics does not permit the precise analysis made by proponents, such statistics support this general position. Local producers, however, do not carry an unreasonable volume of the necessary market surplus. The overall Class II utilization for the market is only 5.8 percent of total market utilization and less than 10 percent of receipts from registered producers which, from experience in other federally regulated fluid markets, is substantially less than the necessary reserve which a market such as Rhode Island must carry to assure a continuing adequate supply to meet daily and seasonal fluctuations in supply and demand. Hence, the market relies primarily on up-country unregulated supplies and surrounding Federal order markets to provide the necessary reserves. Since, as previously stated, nonregistered milk is purchased at prices closely related to the Boston blended price, which reflects an average Class I utilization of about 55 percent, the crediting of registered producers with the total Class II utilization tends to enhance the overall buying advantage of importing handlers.

A market structure which grants a preferential price to registered Rhode Island producers cannot provide a stable market for such producers over any extended period while handlers have the opportunity to gain a procurement advantage through the use of lower priced milk from upcountry sources. The State, as a practical matter, cannot effectively regulate milk which moves across State lines, and while local dealers may voluntarily reduce imports of outside milk temporarily to gain support from local producers, it is inevitable that the incentives for using unregulated milk will result in a loss of market for local producers.

The Southeastern New England market is a deficit market and must rely on sources of supply in northern New England and New York to supplement the local supply. Recent developments in bulk tank cooling and transportation facilities have contributed to efficiencies which permit greater flexibility of handler operations at greater distances from the consumption center in Southeastern New England. Handlers serving this market, because of the high demand for fluid milk locally and the existing opportunity to procure fluid milk at prices related to the Boston blend price in the country for fluid use in the marketing area, have a material competitive advantage over those handlers buying on a classified use plan in this and other Federal order markets in the region due to the difference in their product cost and the Class I price. Premiums over the blend price which may be offered by local handlers making "upcountry" purchases have a detrimental effect upon adjacent markets by inducing producers to leave cooperative associations and markets with which they have maintained association for a number of years to deliver to handlers for this market. This situation has resulted in uneconomic short-time shifts in producers between markets and has had an adverse effect upon not only the Southeastern New England market but also the adjacent markets in New England.

The marketing situation as it now exists constitutes a serious and continuing threat to the stable and orderly marketing of milk and to the maintenance of an adequate supply of pure and wholesome milk for the Southeastern New England marketing area.

The issuance of a marketing agreement and order for the Southeastern New England marketing area will contribute to greater stability of the fluid milk market and will tend to effectuate the declared policy of the act. The adoption of a classified pricing plan based on audited utilization of handlers will provide a uniform system of pricing throughout the area and assure a fair and equitable return to all producers.

• • • • • • • • • •

Location differentials. Location differentials should be established for milk received at plants located substantial distances from the market. Such differentials recognize the principle that milk similarly used and located should be similarly priced. Milk originating nearest the market should command a higher price than milk located at greater distances by at least an amount which reflects the difference in the cost of transporting it to the marketing area.

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Provision should be made for the payment of farm location differentials to producers in the nearby supply area. The amount of these differentials will be obtained by an appropriate deduction from the total value of all milk before completing the computation of the marketwide uniform price.

Producers located in the State of Rhode Island and east of the Connecticut River in the State of Connecticut and in the Massachusetts Counties of Barnstable, Bristol, Dukes, Nantucket, Plymouth, Norfolk and Suffolk and that part of Worcester and Middlesex south of the Massachusetts turnpike should receive a farm location differential over the basic blended price of 46 cents per hundredweight. Pro-

ducers located in the Massachusetts counties of Essex and that part of Worcester and Middlesex north of the Massachusetts turnpike and in the New Hampshire towns of New Ipswich and Greenville should receive a farm location differential of 23 cents per hundredweight. However, in no event should the amount of such differential result in a price higher than the applicable Class I price at the plant where the milk is received.

Historically, dairy farmers in the States of Massachusetts, Rhode Island and Connecticut, because of their location with reference to the large population concentrations of New England have disposed of a substantially larger percentage of their production for fluid uses than have dairy farmers in the upcountry area. Hence nearby producers have been able to realize a price higher in relation to more distant producers than can be accounted for by the advantage in the cost of transportation to market. Under the marketwide pooling herein proposed and without some adjustment mechanism the nearby producer, notwithstanding, would be paid on the basis of the average utilization of all milk on the milkshed rather than according to the utilization of his milk. Under a regulated market, however, he obtains the benefit of an established Class I price which may be higher than in the absence of regulation, and has assurance that his milk will not be displaced by cheap, unregulated milk from more distant sources. The distant producer also benefits from an established Class I price, and by the fact that he gains a larger share of the fluid market than is likely without marketwide equalization.

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From the Secretary's Decision, 29 F.R. 11205 Promulgating the Mass.-Rhode Island Milk Order, Aug. 4, 1964

• • • Distinguishable markets for milk in most of eastern Massachusetts and Rhode Island no longer exist, however. The population increase of recent years, and particularly

the growth of suburban areas around principal cities in Massachusetts and Rhode Island, has induced handlers in one defined marketing area to extend their distribution routes into other such marketing areas. This action has been encouraged by the increasing proportion of business done through supermarkets and by improved roads and transportation facilities. To achieve economies of scale and to meet consumer demand, a number of handlers have concentrated their processing and packaging operations in larger plants which contain the specialized equipment necessary to package milk in the many sizes and types of containers in use today. This has resulted in regular distribution to more than one regulated market at the same time from an individual plant. Also, the Boston, Southeastern New England, and Worcester marketing areas adjoin each other and the eastern periphery of the Springfield marketing area is relatively close to the western boundary of the Worcester marketing area. Because distributing plants are scattered widely throughout these four marketing areas, only short distances are involved in many cases for operators of these plants to extend their distribution routes into another marketing area. The numerous instances of overlapping of handler sales areas is thus resulting in intermarket competition for fluid milk sales throughout an area which has become essentially a single fluid milk consumption center.

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It is clear that a single marketing area has developed where previously separate markets existed. Under this circumstance, the economic stresses, marketing instability and price uncertainties which have developed and persisted must be eliminated by the adoption of a single milk order with a single marketwide pool.

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Some evidence would suggest that the difference between the receiving costs at country plants and such costs at city

plants is as low as 5 cents per hundredweight. Other evidence indicates that this cost difference may be significantly higher. In view of the wide variation in costs apparently being experienced by handlers, it is concluded that the difference between country plant and city plant handling of 10 cents per hundredweight, which is now reflected in the 54-cent zone differential, should not be modified on this record. As marketing practices, conditions, and technology change, perhaps a somewhat lower handling allowance will be appropriate. Evidence in this record suggests that a thorough review of this matter would be warranted at a future date.

As just indicated there are, however, certain reductions which have occurred in the costs of handling milk and transporting it from country locations to city plants. This makes the present zone differential of 54 cents inappropriate for valuing milk received from producers at city plants in relation to milk received from producers at plants in the 21st zone. The present zone differential exceeds the indicated total additional cost of receiving milk at the city through a country plant. Therefore, the operator of a city plant who receives milk directly from producers in fact pays, insofar as the order is concerned, a greater amount for his milk supply than does the operator of a city plant who obtains his fluid supply from country plant sources.

This situation encourages city plant operators to obtain increasing quantities of milk from country plants for their fluid requirements. Such plant operators were described as able to purchase milk from country sources delivered f.o.b. the city plant at approximately the city plant Class I price. Under this arrangement, it is conducive for city plant operators to purchase milk from country sources and avoid the costs of field service, quality control, bookkeeping, and added receiving costs normally associated with receiving milk directly from individual producers. Multiple-plant handlers with both country and city plants are in a

particularly favorable position to take advantage of the lower handling and transportation costs than are now reflected in the city plant Class I zone differential. One of the results has been that a major cooperative association has had to expand its manufacturing facilities in southern New England in order to market an increasing proportion of nearby produced milk for which Class I outlets have been lost to country plant sources.

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It is therefore concluded that the allowance for transportation to be reflected in the city plant zone differential should be 37 cents. Further, the plant handling allowance to be reflected in this differential should continue to be 10 cents. Accordingly, the Class I price applicable at nearby (city) plants under the Connecticut order and the proposed Massachusetts-Rhode Island order would be 47 cents greater than the Class I price at plants located in the 21st zone.

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A city plant zone differential of 54 cents per hundredweight under the New England orders is applicable also to the blended price which is returned to producers delivering milk directly to city plants. The nearby plant zone differential of 47 cents proposed herein for Class I prices likewise should be made applicable to blended prices under both the Massachusetts-Rhode Island order and the Connecticut order. Inasmuch as milk pooled under the orders is produced primarily for the fluid market, the blended prices returned to producers by location should reflect the same differentials which attach to Class I milk.

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4. *Farm location differentials.* The farm location differential provisions under the present New England orders should be continued under the Mssachusetts-Rhode Island order and the Connecticut order.

A group of nine cooperative associations, which represents principally producers whose farms are located out-

side any of the specified farm location differential areas proposed that farm location differentials be eliminated under the New England orders. Three other cooperative associations proposed that a producer whose farm is located within New England and who is presently eligible to receive a farm location differential (either 46 cents or 23 cents depending on the location of the farm) under any New England order be eligible to receive the same differential irrespective of the New England order under which his milk is pooled. Another cooperative association proposed that the farm location differentials be increased as an offset to any reduction made in the city plant Class I zone differentials under the orders.

Farm location differentials represent payments of 46 cents and 23 cents per hundredweight to producers whose farms are located in specified "nearby" and "intermediate" areas, respectively, in addition to the applicable zone blended price which these producers receive. The payments are met by deductions from pool funds. The additional returns to producers who are eligible for these differentials are, in essence, monies which, in the absence of such differentials, would accrue through the blended price computation to all producers, including more distant producers.

Such farm location differentials have been in effect under the several New England orders since the inception of the orders. The differentials were adopted to reflect in the pricing structure of the orders historical price relationships by location which prevailed in these markets. It was found that customarily somewhat higher values, above those which normally reflected transportation costs, attached to milk produced near the principal consumption centers as compared to the market value of milk produced in the more distant areas of the milkshed.

While considerable testimony in support of removal of the provisions was received, it was not established that the

farm location differential provisions are resulting in unstable or disruptive marketing conditions which warrant their deletion from the orders at this time. Although certain marketing problems in the nearby and intermediate market areas were referred to in the testimony, these problems are not the result of production increases on farms in these areas which logically might be attributable to the higher returns to producers in these areas. Such increases have not been significantly different from those on farms not eligible for the farm location differentials.

During a period of general incerase (sic) in milk production throughout the milksheds of the New England markets, the average daily milk deliveries per farm for those farms located in the farm location differential areas under the Boston order and for those farms located outside such areas both increased 23 percent in 1962 over the average of such deliveries in 1960. In the Southeastern New England market the average daily deliveries per farm for those farms located in the differential areas increased about 16 percent in 1962 over 1960 while such deliveries from farms not located in any differential area under the Southeastern New England order increased about 13 percent during this period.

Comparable percentage figures for Connecticut market producers for this period are not available. A comparison of 1961 with 1960, however, shows that there was an increase of 8 percent in the average daily deliveries per farm for those farms located in the differential areas and an increase of 13 percent in such deliveries for those producer farms located outside the Connecticut differential areas. In the Springfield market the average daily deliveries per farm for those producers in the differential areas increased about 18 percent during the 1960-1962 period. In this market very few farms are located outside the differential areas. Such increase of 13 percent is not out of line with comparable increases in the other markets, however. In

the Worcester market such daily average deliveries from farms located in the 46-cent differential area (there is no 23-cent differential area under the Worcester order) increased about 17 percent during this two-year period while such deliveries per farm located outside such differential area increased about 32 percent.

The average number of producers with farms located in the farm location differential areas is decreasing in the Boston, Springfield, Southeastern New England, and Connecticut markets. The farm location differential area under the Worcester order was expanded in September 1960 and this caused an increase in 1961 over 1960 in the average number of producers who were eligible to receive such a differential. The average number of such producers decreased in 1962 from such number in 1961, however.

Marketing problems which have been attributed to the farm location differentials do not relate to the rates of the differentials as such but rather to the changes in applicable differential rates which often occur for producers when they are shifted from one market to another. Problems of this kind, however, are dealt with by the proposed merger of orders. Further, an unwarranted decrease in returns to nearby producers would result at this time if any reduction were made in the farm location differentials in conjunction with the 7-cent reduction in the city plant Class I zone differential proposed herein. It is therefore appropriate that the present levels of farm location differentials continue to be applicable under the New England orders.

The proponent cooperative associations excepted to the findings and conclusions on this issue and requested that a decision on the issue be deferred pending a suggested study of the economic and legal aspects of farm location differentials by industry and governmental representatives. As indicated above, we believe there are adequate reasons on this record for continuing the farm location differentials

at their present rates. An industry study of such differentials may be made, of course, at any time or could have been made at any time in the past in preparation for their review. The matter may be reviewed when it is shown that further consideration in hearing is appropriate. We are not warranted in deferring the decision until such a study has been made.

It would not be apropriate to increase the farm location differentials under the Massachusetts-Rhode Island .and Connecticut orders, however, by part or all of the proposed reduction in the city plant Class I zone differential. Proponent of this proposal contended that under a reduced transportation differential such an increase in farm location differentials should be made to reflect in the returns to nearby producers the full value of nearby producer milk as compared to country plant milk.

It is probable that the attractiveness to handlers of nearby producer sources of milk will be increased under the circumstance of a reduced city plant Class I zone differential. As described under Issue No. 3, country receiving and transportation costs have decreased in recent years, indicating that the present zone differential for city plants is excessive. Reducing the zone differential merely provides for a proper relationship between the price to the handler for producer milk received at city plants as compared with the price to the handler for milk purchased from country plants. While such action may increase the marketability of nearby milk, the intrinsic value of the milk has not been increased. Accordingly, this proposal is denied.

The present farm location differential areas under the Boston, Springfield, Worcester, and Southeastern New England orders should be combined under the Massachusetts-Rhode Island order. With minor exception as described later, all territory which is within the present 46-cent differential area under any of the four orders should

constitute the 46-cent differential area under the consolidated order. Similarly, all territory (also with minor exception as described later) which would not be within this proposed common 46-cent differential area but is now within the 23-cent differential area under any of the present four orders should constitute the 23-cent differential area under the consolidated order.

Producers now under the four orders to be merged would be suppliers of a single marketing area under the Massachusetts-Rhode Island order. Because only one marketing area will be involved, producers should receive the highest farm location differentials for which their farm locations would have made them eligible under any of the present four orders, regardless of the plant to which their milk is delivered under the merged order.

The consolidation of the respective farm location differential areas now provided under the four orders would eliminate sometimes unexpected decreases in returns to individual producers. When a distributing plant becomes pooled in another market, the producers delivering milk to that plant become associated with the new market also. This has been a disturbing condition for certain producers who were eligible for the 46-cent differential before a plant shift but who became eligible only for the 23-cent differential, or for no differential at all, after the shift was made. Handlers experience difficulty at times in handling milk with maximum efficiency because of their reluctance to shift producers from one market to another when such producers would experience a reduction in returns. Cooperative associations also may be handicapped in shifting producers to plants which have need for additional supplies. It is appropriate, therefore, that the application of farm location differentials under the Massachusetts-Rhode Island order be as described.

It is not necessary to provide that a New England producer who is eligible for a farm location differential under

the Connecticut order or the Massachusetts-Rhode Island order be eligible for the same differential when his milk is pooled under the other New England order. The consolidation of the four orders and the farm location differential areas provided thereunder will remove, for all practical purposes, the problem of change in differentials for producers who shift, or are shifted, from one to the other of these markets. This is so since it is likely that there will be relatively few instances of plant shifts with only two orders in New England and since virtually all producers shipping to the merged market but readily available to the Connecticut market would be in the 46-cent differential area under either order.

As indicated, the 46-cent and 23-cent differential areas under the Boston order are proposed to constitute a part of the areas in which farm location differentials would be applicable under the consolidated order. In contrast to the other four New England orders which now define farm location differential areas in terms of city and town boundaries or easily distinguishable highways or rivers, the differential areas under the Boston order are defined by "40-mile" and "30-mile" airline arcs which are measured from specified locations. To facilitate the administration of the orders, it is concluded that the peripheries of the two differential areas provided under the Massachusetts-Rhode Island order should be described in terms of city and town boundaries. The use under the consolidated order of long-established, well-known, and readily ascertainable political boundaries will provide a less burdensome procedure for determining a producer's eligibility to receive a farm location differential than does the use of airline arcs measured from a base point.

Under this proposed modification of a portion of the peripheries of the Boston order farm location differential areas, all cities and towns in Maine and New Hampshire which are wholly within the present 40-mile arc, as meas-

ured from Lawrence, Massachusetts, would be included in the 46-cent differential area under the consolidated order. In addition, the modification would extend the 46-cent differential area to the entire area of the following cities and towns which are now intersected by the 40-mile arc: the cities and towns of Barrington, Chichester, Deering, Francestown, Greenfield, Pembroke, Pittsfield, Rochester, Rollinsford, Strafford, and Weare in New Hampshire.

The 23-cent differential area under the merged order would include those cities and towns in Maine and New Hampshire which are wholly within the presently defined 80-mile arc under the Boston order but which would not be included in the Massachusetts-Rhode Island 46-cent differential area. In addition the entire area of each of the towns of Kennebunkport and Lyman in Maine and Gilmanton, Middleton, Milton, and Surry in New Hampshire would be included in the 23-cent differential area under the merged order.

The cities and towns individually listed above are those areas which are intersected by the respective airline arcs used in defining the differential areas under the Boston order and from which one or more producers recently have delivered milk to the Boston market from farms located inside the respective arcs. The remaining cities and towns which are intersected by the respective arcs are areas from which no milk has been delivered to the Boston market since January 1, 1962. Accordingly, it is appropriate that these areas not be included within the respective differential areas. Under this arrangement, only nine Boston producers known to have farms located in the 23-cent differential area at the time of the hearing would be shifted to the 46-cent differential area and the farm of one known Boston producer not located in any differential area would be shifted to the 23-cent differential area.

Exception was taken to the proposed continued use of certain highways in defining the peripheries of the farm

location differential areas under the Connecticut order. Exceptor contended that inasmuch as it was proposed in the recommended decision that the peripheries of the farm location differential areas under the consolidated order be defined in terms of political boundaries similar procedure should be used in all cases under the Connecticut order.

No proposal of this nature was presented at the hearing which would provide a basis for this action. Moreover, the highways used to describe part of the area boundaries are easily ascertainable lines of delineation. This is in contrast to the more difficult determination of area peripheries on the basis of airline arcs as currently in use under the Boston order. The principal purpose of the proposed change in the manner of defining farm location differential areas under the Massachusetts-Rhode Island order is to establish for both producers and the market administrator boundaries which can be easily determined. In many instances well-defined highways also meet this requirement for the establishment of boundaries. We know of no problem in this connection under the Connecticut order.

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9. *Method and scope of pooling.* (a) The marketwide pooling plan for distributing returns to producers presently in use under the Boston, Springfield, Worcester, and Southeastern New England orders should be provided under the Massachusetts-Rhode Island order.

A proprietary handler in the Southeastern New England market proposed that the method of pooling returns to producers in that market be changed from marketwide pooling to individual-handler pooling. Another proposal listed in the hearing notice but not supported by proponents or other parties would require that individual-handler pooling replace the present marketwide pooling under each of the four orders proposed herein to be merged.

The conclusion that the Southeastern New England order should be merged with the Boston, Springfield, and

Worcester orders into a single regulation renders moot the question of individual-handler pooling under any one of the now separate orders. The question then is raised as to the propriety of individual-handler pooling under the Massachusetts-Rhode Island order.

Under such form of pooling all producers supplying the same regulated handler would be paid a blended price (subject to butterfat and location differentials) based upon the uses of milk made by such handler. With this arrangement it is usual that producers supplying one handler receive a blended price different from that paid by other regulated handlers in the market inasmuch as the proportions of milk used in the different classes usually vary among handlers. This method of pooling is in contrast to marketwide pooling now provided in each New England order, whereby the values of milk delivered by all producers to all regulated handlers in the market are combined into one fund and all producers supplying the market are paid the same blended price except for adjustments for butterfat and location of the plant of receipt.

Individual-handler pools generally are more practicable for markets where milk supplies are relatively short and where reserve supplies are distributed rather evenly among all handlers in the market. These conditions do not prevail in the Boston market, and would not prevail in the consolidated market because of the predominance of the Boston market's position among the four markets proposed to be merged. Most distributing plants in New England are not equipped to handle reserve milk in any volume. Consequently, operators of such plants customarily have relied on the relatively limited number of manufacturing plants, most of which are presently associated with the Boston market, for the disposal of often substantial quantities of reserve milk. In this situation the institution of individual-handler pooling under the consolidated order would result in widely differing blended prices as between those pro-

ducers whose milk is received directly at distributing plants and those whose milk is received at country supply plants where available manufacturing facilities are maintained.

It is logical to expect that individual handlers and cooperative associations would find it necessary to make substantial changes in the present patterns of milk movements and disposal in order to obtain for their respective producers the highest possible returns. The major readjustment of the entire marketing structure in New England which undoubtedly would accompany the institution of individual-handler pooling would add to marketing costs and thus be uneconomical and undesirable. The differences in producer prices which could be expected to ensue from such method of pooling would not promote the objective of more uniform alignment of prices to producers which, as elsewhere described in the decision, is important to orderly marketing in New England. The application of market-wide pooling under a merged order will promote market stability by insuring that all producers supplying the Massachusetts-Rhode Island market will share on a uniform basis the Class I and Class II utilization in the entire market and thus assist to permit the assembly of supplies in an economical manner for available outlets. Accordingly, the proposals for individual-handler pooling are denied.

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(c) No provision should be made in the New England orders for a "base-excess" plan of distributing producer returns. A cooperative association in the Southeastern New England market proposed that such a plan, which would provide for a system of Class I bases for all producers presently shipping to the New England markets, be incorporated in the New England orders. Proponent contended that the present method of pricing milk under these orders does not provide sufficient incentive for producers to adjust their production to the Class I utilization of milk in the market.

The Agricultural Marketing Agreement Act of 1937, as amended, authorizes the inclusion of base plans in Federal orders. Such plans have been incorporated in a number of Federal orders, but only for the statutory purpose of minimizing seasonal fluctuations in milk production. The objective of the type of base plan proposed, i.e., the reduction of aggregate deliveries of milk by producers to pool plants in relation to the market's fluid needs irrespective of price, would supplant the function which is intended under the Act to be performed by prices established at the levels required by the Act. Prices under milk orders must be established at levels which will tend to equate demand and supply for the market, insure a sufficient supply of pure and wholesome milk, and be in the public interest. Order pricing is intended to operate under conditions where milk supplies will remain reasonably free to respond to changing price conditions. Under a base plan of the type proposed, total production would be influenced greatly by the impact of the base plan rather than by the level of prices provided under the order and would be in conflict with the price criteria of the Act. The proposal therefore is denied.

Portions of Hearings Held Commencing January 7, 1963, Docket Nos. AO14-A35, AO203-A17, AO204-A17, AO302-A9, and AO305-A9

Testimony of James D. Lee for New England Milk Producers

The Witness: I wish to describe the effect on blended prices of mergers and of elimination of nearby farm location differentials with respect to Proposal No. 3, which is our own proposal, and Proposal No. 1, of the CDES.

First, with respect to the effects of merging all five markets—and I shall use as an example the prices and situation as of August, 1962: In August, 1962, the blended prices to nearby producers were as follows for each of the five markets: Boston, $5.70; Connecticut, $5.99;

Southeastern New England, $5.96; Springfield, $5.58; and Worcester, $5.36.

Dr. Young: Would you read those again?

The Witness: Surely.

Boston, $5.70; Connecticut, $5.99; Southeastern New England, $5.96; Springfield, $5.58; and Worcester, $5.36.

Dr. Young: Thank you.

The Witness: If the five markets were one in August, 1962, and if there were the same farm location differentials in effect, the price to nearby farmers would have been $5.82 for the nearby area, $5.50 in the intermediate zone, $5.36 in city plants from milk coming from different zones, and $4.82 at plants in Zone 21.

Mr. Whitney: That is for Boston?

The Witness: No; all five.

Now, if that were the case, the Boston blended price (1702) would have been—

I beg your pardon. This five-market price would have been 12 cents higher than the Boston actual price.

I wish to start that again.

Comparing this five-market price with the actual blended prices in the separate markets, the Boston price would have been raised 12 cents, and the Connecticut price would have been dropped 17 cents. The Southeastern New England price would have been dropped 14 cents. Springfield would have been raised 24 cents, and Worcester dropped four cents.

Now, if, along with the effects of pooling the utilization over five markets, and at the same time we were to eliminate the nearby farm location differentials, the whole level of the price structure would be raised 20 cents, except for the nearby part of the price level, and the structure would be as follows:

The price at the 21st zone would be increased from $4.82 to $5.02. The price at city plants for milk coming in from different farms would increase from $5.36 to $5.56. And the prices to all producers at city plants would be $5.56.

Comparing the revised price structure with the actual price structure at that time, prices to nearby producers in Boston would be reduced 14 cents from the actual price. The five-market price to producers at city plants would be 43 cents less than the actual price to Connecticut producers. It would be 40 cents less than the actual price to producers in Southeast (1703) New England, two cents less than the price to nearby producers last August in Springfield, and 30 cents less than the price to Worcester producers from nearby farms last August.

In the intermediate area, the effect of this modification of the price structure would be to increase prices to producers in the intermediate area by nine cents, reduce them 20 cents in that area for Connecticut, reduce them 17 cents for that area in Southeastern New England, and raise them 21 cents for that area in Springfield.

Looking at the Boston up-country producers alone, under these assumptions, their price would be about 32 cents a hundredweight higher than it actually was in August, 1962.

If the Boston, Springfield, and Worcester markets were in one pool in August, 1962, with nearby farm location differentials substantially as they were, the three-market blended price to nearby producers at city plants would have been $5.71 a hundredweight, the price to such producers in the intermediate zone would have been $5.43, the price to distant producers at city plants would have been $5.25, and the Zone 21 price would have been $4.71.

The blended prices that would have obtained under this assumption would have been one cent a hundredweight higher than the actual Boston price. It would have been 13 cents higher than the Springfield price at city plants, nearby producers and it would have been 15 cents less than the actual price to Worcester (1704) producers at nearby plants.

If the principle of eliminating the nearby farm location differentials were adopted—and such elimination has not been proposed by us in our testimony on Proposal 3—the price to distant producers in Zone 21 would have been raised from $4.71 to $4.81. The price to distant producers at city plants would have been raised from $5.25 to $5.35, and we would have had those comparisons with the actual prices.

As far as the nearby producers' prices are concerned, the change due to a three-market merger with farm location differentials out would be to reduce the Boston price 35 cents, the Springfield price 23 cents, and the Worcester price 51 cents.

Mr. Chermauskas: These are all reductions?

The Witness: Yes.

In the intermediate zone, the price to Boston producers would be 12 cents lower. Of course, there would be no change in Springfield. But in Worcester, the price would have been 28 cents lower.

Mr. Tipton: Did you say the price in the intermediate area of Worcester? I did not get what you were talking about. There is not an intermediate area to Worcester, is there?

The Witness: That is correct. There is no intermediate. I had those two interchanged.

The price in the intermediate zone in Springfield was $5.35. Under these assumptions, it would be $5.48, so that it (1705) would be raised 13 cents; and there is no comparison for the intermediate zone in Worcester, so the figure I gave of 28 cents is to be stricken.

Mr. Aplin: I think maybe there is a basic error in these figures, in that the actual supply in Southeast New England is slightly different than Mr. Lee stated it. I wonder if that would not affect some of the subsequent figures.

Is that true, Mr. Lee?

Exhibit No. 7, page 2, shows that the blended price to nearby producers is $5.98, and I think you are using $5.96.

The Witness: Yes, I did.

Mr. Aplin: That would change some of the figures you have given, would it not? The comparison of actual prices and what they would be in Southeastern New England?

The Witness: It would have a slight effect, yes.

Mr. Aplin: There was one other point I wanted to make before you go on. In the comparison of what it would be with all markets merged, but with no farm location differentials, I think you said that the 21st zone price would be $5.02, and the price to nearby producers at city plants $5.56, but would not these have to be 54 cents apart?

Excuse me. I guess I am wrong. I guess they are 54 cents apart. I am fast on that one.

Then this other one would make, I agree, only a slight difference. But would you not need to revise slightly these (1706) figures?

The Witness: I am not positive that in my scrap paper I didn't use $5.98 and copy on this chart I am using to talk from $5.96. I would want to check that before I answered on it. And if I did, I shall attempt to get a measure of the distortion that is introduced.

Dr. Johnson: Could I ask a question of a somewhat similar nature?

In making the computations using the month of August, there was a take-out-and-pay-back plan in effect in Connecticut under which money accumulated in April, May, and June was repaid in July, August, and September, and in August an amount of approximately 17 cents a hundredweight, and my question, I guess, the first question: If that 17 cents, and the amount of money on which it was based was not available under Proposal 1, would not your results on the five-market computations have been somewhat different?

The Witness: Yes, they would, Dr. Johnson.

Dr. Johnson: And then only one other follow-up question. And specifically where you made the calculations for Proposal 1, where there was one order, and the location differential was eliminated, and you came out with a $5.56 city plant price, which you showed was only two cents lower than Springfield, would not that two cents be increased to perhaps six cents, or some figure in any event larger than two cents?

(1707) The Witness: Yes.

Examiner Holstein: Mr. Tipton?

Mr. Tipton: I was late, and I was just wondering if the method of determining what the price would have been has been put into the record.

The Witness: No, I haven't explained the basis of the computation, but I would be glad to tell you.

Mr. Tipton: Second, I wondered if you intended to present these figures in tabular form, or do anything further than just reading them into the record at this time. It is rather difficult to follow the figures, the meaning of them and so forth, their not being in tabular form.

The Witness: I think in view of Mr. Alpin's comments and those of Dr. Johnson, it would be appropriate to recheck them, with those points in mind, and after I have done that, I would be glad to put them in tabular form and make them generally available.

Examiner Holstein: Is that satisfactory, Mr. Tipton?

Mr. Tipton: Yes.

Were you through with your direct, now?

The Witness: No.

Examiner Holstein: Go ahead.

The Witness: If the prices to up-country producers were reduced on the order of 32 cents a hundredweight, to use as an example the figure that I gave you, and

variable sharp (1708) decreases in prices occurred to producers delivering to city plants from these nearby areas, particularly the areas close in to the distribution centers, we could expect that the volume of production from the northern producers would increase substantially and that producers, many producers, in a perhaps desperate effort to survive in southern New England, would resort to jug operations in peddling their own milk.

Mr. Geyer: Mr. Lee, I thought you said if the up-country price was reduced 32 cents.

The Witness: That was a slip of the tongue. I meant increased 32 cents. Thank you.

It is obvious that there would follow serious adjustments.

Within perhaps two years the supply-demand adjuster in the Class I price formula could conceivably reduce the Class I price 44 cents. This reduction in the Class I price and a decrease that would take place in the percentage of Class I milk could (1710) wash away everything gained by up-country producers from the merger and appropriation of the differentials to nearby producers.

The production in the nearby areas, contrary to that in northern New England, has not been following an upward trend over the years. In the Boston market before amalgamation with the Merrimack market, the percentage of nearby milk was substantially less than it is now, and it is only about three per cent at the present time.

The nearby farm location differentials were established at the outset of the orders, recognizing the existing pattern of prices prior to Federal regulation. There has been no move over the years to change the original rates of 46 and 23 cents, to keep them proportionally aligned with the upward trend in prices, so that these differentials have become a declining percentage of the price. There has been no inflation, in other words, in that farm location differential.

Dairy men in southern New England have entered into many capital commitments during all these years, and may have done so even very recently, while those differentials have been frozen into the price structure.

Doubtless, many loans have been made to producers by the Federal Land Bank, long-time loans, using normal prices to producers. The farm location differentials have been in the orders for so long that I feel it is only reasonable to assume that in considering granting loans, the differentials would be (1711) certainly considered to be a part of the normal price. It is doubtful that they could

Within perhaps two years the supply-demand adjuster in the Class I price formula could conceivably reduce the Class I price 44 cents. This reduction in the Class I price and a decrease that would take place in the percentage of Class I milk could (1710) wash away everything gained by up-country producers from the merger and appropriation of the differentials to nearby producers.

The production in the nearby areas, contrary to that in northern New England, has not been following an upward trend over the years. In the Boston market before amalgamation with the Merrimack market, the percentage of nearby milk was substantially less than it is now, and it is only about three per cent at the present time.

The nearby farm location differentials were established at the outset of the orders, recognizing the existing pattern of prices prior to Federal regulation. There has been no move over the years to change the original rates of 46 and 23 cents, to keep them proportionally aligned with the upward trend in prices, so that these differentials have become a declining percentage of the price. There has been no inflation, in other words, in that farm location differential.

Dairy men in southern New England have entered into many capital commitments during all these years, and

may have done so even very recently, while those differentials have been frozen into the price structure.

Doubtless, many loans have been made to producers by the Federal Land Bank, long-time loans, using normal prices to producers. The farm location differentials have been in the orders for so long that I feel it is only reasonable to assume that in considering granting loans, the differentials would be (1711) certainly considered to be a part of the normal price. It is doubtful that they could have foreseen that at one fell swoop the farm location differentials would be swept away.

For the reasons that I have indicated, the credit institutions serving northern New England producers would be poorly advised if they thought there would be anything but a temporary shot in the arm to returns to the up-country producers.

I have not time to do any extensive research on this question, and I might just as well admit now that such little bit as I have done underlying these comments today was done in the wee hours of this morning, and I make no claim to extreme accuracy, and apologetically wish to say that I will do everything I can to try to correct any numbers that I have made errors on.

It seems to me that any radical change in the price structure of the market warrants long and careful research. The nearby farm location differentials have been a part of the New England price structure for so many years that they need not be destroyed summarily without permitting reasonable time for thorough research to be made as to the impact of such action on the market and the dairy economy of the region.

I cannot accept that over the years the Secretary has permitted outrageous discrimination against up-country producers to have been perpetrated by the orders, and that they need to be swept away at one fell swoop.

(1712) I do not feel that the southern New England producers or the Secretary of Agriculture have any reason

or having any guilt complex over having allegedly discriminated unfairly in behalf of nearby producers; nor that nearby producers should feel, as the result of the testimony presented at this hearing, unless before it is concluded overwhelmingly convincing conclusions from extensive research would warrant it, that they have accepted millions and millions of dollars to which they were not entitled, or that they have been picking the pockets of their fellow producers in northern New England.

As I have said, the price structure that has been recognized is the one that was found by USDA to have existed just prior to regulation—I submit that the nearby farm location differentials question does not hinge alone on the question of the quality of the milk now versus what it was then.

Quality premiums were always a matter of negotiation between handlers and producers. It is not alone the better roads and larger tank trucks which should decide this issue, it seems to me. And the argument that handlers today would not pay a higher price by virtue of the nearby location of the milk is presumptive.

We have many instances over the country of premiums being paid. There have been instances in markets in the country where premiums over the order price have been paid, and the prices established under the order seem to take into account (1713) all of the purely economic factors involved.

In other words, we cannot conclude that handlers necessarily would not agree to pay at least something more for nearby milk. Handlers are not always economic men.

When the Springfield, Worcester, Southeastern New England and Connecticut orders were promulgated, they contained the nearby farm location differentials which had been established in the Boston order, and for the same reasons. In each case it was unregulated milk from outside sources which was being sold in these markets, milk that the state control boards could not control effectively, that led to the orders.

The problem was not one of the nearby farmers receiving low prices for their milk, but rather it was largely one of the regulated milk having to compete unfairly in those markets with the unregulated milk. That is to say, Boston handlers, for example, were trying to compete in these southern New England markets with pool milk and were at a disadvantage. The prices under state authority to the local producers, as I recollect, were not comparatively low.

I do not mean to imply that had not Federal orders been instituted in the southern New England markets that I have mentioned, marketing conditions could not have degenerated to the point where local producers would have been hurt substantially; but at the time they came in the local producer prices were generally favorable.

(1714) Southern New England producer organizations voted for the new orders, even proposed them. They were fully aware that the orders did provide for nearby farm location differentials which recognized their existing price structure; and these pricing provisions seemed to them to be fair and equitable and in their long-run best interest.

I know of no one in the NEMPA who anticipated that after a period of years, in the case of Southeast New England and Connecticut only a very few years, this price structure would be greatly changed.

I am not in accord with Attorney Carroll's characterization of the proposal to eliminate nearby farm location differentials as "squawks from the North Country." I do not believe we are dealing with any "squawks," but an honest question of what is right, rather than who is right, and that we should explore all of the factors involved.

Nevertheless, I do think it is unfortunate at this particular time that our producers should be divided on this question. Our New England producers in their cooperative associations now are and seem destined to be in

peril from outside dangers, from unfavorable court decisions, technological developments in dairy products, and this does not seem to be an appropriate time to rock our own boat.

I guess that is all I have to say.

Examiner Holstein: We will take a ten minute recess.

(1715) (Short recess.)

Cross Examination by Mr. Tipton:

Q. I am sure you are very familiar with Exhibit 24, which contains an article on farm location differentials. In this article you portray or make a statement as to what testimony was entered at a hearing prior to the issuance of the order in 1937, which happens to correspond with the differential rate that was put into effect in 1937.

That differential, or the testimony that was given, closely related to the 46 cent differential, did it not? A. Yes.

Q. Now can you tell me: Who paid that differential? I do not mean by name, but as a group. A. Who paid the differential? There was no differential.

Q. Did the handlers pay the differential? A. The handlers paid the producers who delivered the milk at the city plants a level of prices which was in relation to the up-country prices, as the evidence in the hearing record at (1719) that time, which is quoted in the article, explains.

Q. So if the 46 cent differential was based on that difference, then handlers naturally paid the money that gave the basis for writing the 46 cent differential. Is that not

correct? A. I wouldn't want to testify beyond what was quoted from the record at that time.

There is in the room Professor Ellsworth Bell, who made statistical investigations at that time of prices actually received by producers, nearby producers, at that time, and I would not care to expand on that myself.

Q. You mentioned in your testimony somewhere that you did not think that it could be fully justified on quality, and you mentioned some other elements that you did not think this fully justified it—"it" being the differential.

Can you tell me what your impression or what you think authorizes a nearby farm location differential under the Act?

Mr. Hall: I think that that is asking this witness, who is not a lawyer, a question of law.

Examiner Holstein: That is correct. The addition of that last phrase put it in the legal realm.

If you are asking for economic justification, I will allow this witness to answer; but if you are asking what justifies the differential under the Act, I do not think Mr. Lee should attempt to answer that.

(1720) Mr. Geyer: In addition, it seems to me Mr. Lee spent nearly 30 minutes putting into the record what he thought was the justification for a nearby differential.

Examiner Holstein: I think that is correct.

I do not know whether you were here for all the testimony, Mr. Tipton, but I do not think Mr. Lee should be required to repeat it.

Mr. Tipton: I am sorry if I was asking you to repeat it. I had no intention of doing so.

By Mr. Tipton:

Q. Let me ask it this way, then. I take it from your testimony that you have justified it basically on the historical fact that nearby differentials were paid, or

a price was paid which reflected the 46 cent differential rate back in 1937.

Is this true? A. I pointed out that the very fact that it has existed over this period of time led to decisions, and they were business decisions by producers and institutions serving producers, which resulted in the both short-term and long-term capitalization into the southern New England dairy industry of the nearby farm location differentials, which certainly greatly supplements the reason which you cited, that they had been, or that they did, come about as USDA studied the situation at the time of the promulgation hearings, economic briefs that were prepared in anticipation of those hearings.

(1721) I don't wish to say that I have made a study of the dusty old economic briefs to have at my fingertips a long list of economic factors that at the time justified their inclusion in the order.

Q. Why would a handler—just give me some reasons as to why a handler would customarily apply a differential?

Let me make it more specific. Would he customarily apply a differential because such differentials were historically paid? A. I don't know how he would pay if we swept the differentials away and set up under the order the revised structure which would result from plowing the money now going to southern New England producers over the entire milkshed.

Q. Well, would he customarily apply a differential, if he acted in an economically rational manner, unless the milk had some additional value over another source of milk that he might purchase? A. Well, I testified that handlers don't always pay prices that we economists would rationalize as being appropriate.

Q. I realize that. But if he acted in an economically rational manner—and you are an economist, so you have some connotation of what an economically rational manner might be. A. Well, I am also a political economist,

I think, and I am not sure that we can conclude that handlers will pay farmers always even closely the prices that location theory and the (1722) traditional economic rationale of prices would seem to justify.

Q. So you are saying that in general handlers do not pay for milk according to it's value? A. No, I didn't say that.

Q. Then in general do handlers pay for mik according to the value, too? A. Yes.

Q. So in general would a handler customarily apply a differential to milk which did not have an additional value to him over some other source?

Examiner Holstein: Now you are asking the same question you asked him a moment ago, when he answered at length. I think you are repeating.

Mr. Tipton: I do not think he answered that, sir.

Examiner Holstein: Well, I will let Mr. Lee tell you whether he answered it or not. It sounded to me like the same question you asked three or four questions back: Will the handler pay a location differential if the mik concerned did not have some additional economic value.

Was that not the question you asked two or three questions ago?

Mr. Tipton: I said "generally" in this question, which I think changes it considerably.

Examiner Holstein: You said "generally"? You mean now you said "generally"?

(1723) Mr. Tipton: Yes.

Examiner Holstein: How was the question before any different?

Mr. Tipton: I think the record will show what he said, and I cannot remember what he said, but in my mind it changes it.

Examiner Holstein: You said this question was different because it contained the word "generally." Is the only difference that the question previously did not contain the word "generally"?

Mr. Tipton: That is the only difference that I intended it to have.

Examiner Holstein: I do not think that is a difference, Mr. Tipton. When you asked the question before, it was generally, too, was it not?

Perhaps we are wasting more time than we can save. But do not repeat. You are repeating, because you did not get an answer that you thought was satisfactory. I can realize that. You would like to get a better answer. But I do not think that you should repeat questions in that attempt.

Go ahead, Mr. Lee.

The Witness: I would not want to speculate now as to just what handlers would do price-wise, if we had this changed situation.

By Mr. Tipton:

Q. Well, do you know of handlers that are customarily (1724) applying the differential today to nearby milk? A. All handlers who are buying nearby milk are required by the order to pay producers the differential.

Q. They are paying a differential above the Class I price? A. No. What I mean is that the handlers are paying the blended prices established by the order.

Q. Do you know of any handlers in the nearby area that are paying in addition to the blend price a premium? A. I don't of my own knowledge know any handlers who are now, but if I said I did know that there are such, your next question would be, "Who are they," and I just have the feeling that there are some—

Examiner Holstein: Let's not anticipate what Mr. Tipton's next question will be. This question is: Do you

know of any? If you can answer that, do so; then when he asks his next question we will decide on that.

The Witness: I don't know the names of any handlers paying premiums.

By Mr. Tipton:

Q. I think you made a statement in connection with I believe the promulgation of the Connecticut order, or the hearing leading up to the Connecticut order, or the conditions prior to the promulgation of the Connecticut order; but the problem was not one of nearby farmers receiving low prices for their milk, but rather one of regulated milk having to compete (1725) largely with unregulated milk. A. And I made that statement also with reference to Southeastern New England, and years before that in Springfield and Worcester.

Q. Was there some difference in the price—

Let me ask first: The regulated milk you are speaking of would have been regulated under Federal orders? A. I meant Federal orders.

Q. You also meant regulated under state order, too, did you not? A. I was thinking of the unregulated milk as milk shipped in from other states, which couldn't be effectively regulated under any order.

Q. Yes; but it was competing with milk that was regulated under Federal order, as well as milk that was regulated under state order. Is that not correct? A. That is correct, yes.

Q. Now, you say "compete unfairly." What was this unfair competition? A. Well, as I recollect, the handlers in those markets—

I wish to qualify it. Some handlers in those markets had a supply of milk which they obtained from sources, the exact sources of which only brokers could tell us. It came from unregulated out-of-state areas, which cost them a basic cost equal to the blended price plus the cost of getting the milk to Rhode (1726) Island or Connecticut.

Q. It cost them a blended price? A. Their basic cost was a blended price somewhere. And I won't go so far as to say, although I did hear some comments, that the cost could have been as low as the Class II basically in some instances.

I am not implying that there is anything wrong with the quality of the milk. If it came from a manufactured milk company, there is a chance that the basic cost of that milk would be Class II value.

And handlers in the regulated markets had a legitimate complaint that they were having to compete with other handlers who had a lower cost of product, which was recognized by the Secretary in establishing the orders, and I think was the primary reason for extending Federal regulation into these other markets.

Q. So the handlers were purchasing milk on some kind of an opportunity basis. They were looking for the cheapest source of milk that met their demands. Is this correct? A. Well, I don't want to put all handlers in bed together on this, because they weren't all doing this. Some were paying the prices that the state control boards specified, and they did not seek this commerce that we are talking about now.

Q. But if the situation would have continued without Federal regulation, then you might have anticipated that all of them would have attempted to have got the cheapest supply possible (1727) that still met their demands as far as quality and regularity and all of these things? A. Yes, I pointed that out in my testimony.

Mr. Tipton: I think that is all I have.
Examiner Holstein: Is that all, Mr. Tipton?
Dr. Johnson.

By Dr. Johnson:

Q. Did I understand you to say that although the reduction or elimination of location differentials in the first instance would increase the up-country price, because of

an increased difference from the New York-New Jersey blend, more milk would be attracted and the increase would be washed out in a short period of time? A. Not the increase in production would be washed out in a short time, no.

Q. If I said "production," I meant blend price. A. Well, I said that I thought within a couple of years it would be washed away, yes.

Q. If this occurred, so that the up-country New England blend came down to the New York-New Jersey blend, and at the same time the nearby price in New England was lower, would it not follow that it would tend to have an adverse effect on milk production in New England? A. Why, yes.

Q. With less New England milk in the pool of the merged

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(1729) Examiner Holstein: Mr. Tipton.

By Mr. Tipton:

Q. First I would like to ask if you have made such a detailed study of the movements of milk that might occur between New York and Boston and the effect on the Class I price and the offset on the utilization, that you can say without qualification that any increase would be wiped out. I thought you said a flat yes to a question, without qualification, that any increase would be wiped out. A. Looking back on the history of supply response to price as we have seen it develop over the years, I concluded that it would take about two years for these forces to wipe out the gain which would come from eliminating the location differentials.

I did say also that I thought that the economic effects of such a radical change in the price structure are so significant that it would seem to warrant, after there has been no urgency about the farm location differentials for these many years, that a committee of economists

could well devote a considerable amount of research to get at some of the answers—or to get at the answers to some of the questions we have been discussing here today.

I wanted to be the first to admit that such research does not seem to be available for our use in considering the matter here.

(1730) Q. You said that one of the reasons why this difference would be wiped out would be because we would have an increase in production up-country as a result of the higher price, and you said that this, with the other thing, within the two-year period, would wipe it out; and then all of a sudden we have a lower price, and then you said that we would have a cut-back in production.

Now, what period of time are we talking about, both in terms of the increase in price and the effect on production, and the decrease in price and the effect on production? A. I haven't given much thought to where we would go from a couple of years from now, time-wise. I wouldn't want to try to off the cuff estimate how long before we would be worse off.

Q. Have you stated in the hearing record anywhere what is the membership or approximate membership of your organization? A. No, I haven't.

Q. Do you intend to, or do you wish not to?

Examiner Holstein: You can answer.

The Witness: Frankly, I don't know myself yet.

By Mr. Tipton:

Q. My next question was going to be, then: What proportion of your membership is within an area that is subject to the farm location differential?

Mr. Hall: I object to that question, Your Honor. I do (1731) not think that that adds anything to help the Secretary arrive at a determination.

Examiner Holstein: The question has been answered. The witness does not know.

Mr. Tipton: That is all I have, sir.

Examiner Holstein: Mr. Pelley.

By Mr. Pelley:

Q. In answer to Dr. Johnson's questions, here, with respect to the effect of prices on supplies, does not the answer to that have to be predicated upon the slope of the supply curve, whether it is elastic, inelastic, or something else? And is this not a one-to-one relationship? A. I will answer your question, Mr. Pelley, in this way. I don't believe the process of contraction is in proportion to the process of expansion. And involved also are time periods long enough to allow the forces that are set up to run their course.

There are short-run responses immediately that dairy ration feeding could be stepped up. Then a couple of years later there would be time to make herd adjustments. And supply response is a phased affair.

Q. Is it not true that a supply response is a real thing? A. Yes.

Q. In other words, a supply response to merely the relationship of the flow of product in response to price? (1732) A. Yes, definitely.

Q. And in answer to Dr. Johnson's question, I believe you gave an unqualified "yes," this would happen.

Now, you could say this generally, that milk would flow in in response to price, as merely accepting the proposition that the supply response is upwards sloping to the right. This is all that this indicates, does it not? A. Yes.

Q. Now, would it not be true that to determine this would be good or bad for producers, in this area, you would have to know the slope of the curve? Is that right? A. Yes, definitely.

Q. So without knowing what that slope is, you could not say whether this was good or bad; you could just say that price will tend to adjust supply? A. I would be more specific than that, because we saw what happened to production a few years following the end of World War I. We saw a production response to the higher prices which we had during the Korean War come along shortly after the war, in the early 1950's. We have seen that the maintenance of the difference between blended prices in New England and New York of in the area of a half a cent a quart would lead milk into our New England markets.

When I said that I expected that there would be a decrease in production when the blended price went down, it (1733) reflects the fact that I just don't believe in the doctrine of heresy, you might say, that producers will increase production in response to a decrease in price.

As I said, the matter is a phased affair.

Q. As a general proposition, would you think that the supply response of a given number of producers—now, I am separating here supply response of producers already in the market as against a supply and response inter-market. A. Yes.

Q. Is that the supply and response of producers already in the market was inelastic, or relatively elastic? A. I would want to sit down with a group of my fellow economists and explore that whole question before forming an opinion on that.

Q. You would not want to guess whether it is one or less than one or more than one, even in a general area?

Mr. Hall: I object to the question on the basis of asking this witness to make guesses. I thought we were here to elicit facts.

Examiner Holstein: I think that is right. I presume Mr. Pelley means an estimate.

Do you, sir?

Mr. Pelley: Yes.

Examiner Holstein: Well, we do not have to enter into a discussion. You asked him a question. If the witness will (1734) understand that as an estimate based on his background and experience, I will permit an answer, if he can answer.

Mr. Pelley: I would like to say, Mr. Hearing Master, that I am just trying to explore further a positive answer that he gave to Dr. Johnson, because I did not understand this thought went into this, and I do not think the industry does.

Examiner Holstein: Do you have a clarification question, Dr. Johnson?

Dr. Johnson: Were you through?

Examiner Holstein: He has asked the question and has not gotten an answer yet.

The Witness: Well, I would want to review what literature is available on the response of producers, the supply response of producers, Mr. Pelley, before expressing anything more than my own conviction that a reduction in prices to producers, given reasonable time for farmers to adjust, will cause a contraction in the total output of producers.

I want to leave out—

Examiner Holstein: You need not explain the answer. The answer to your question is "no."

By Mr. Pelley:

Q. I am traveling on the assumption that in order for the Secretary to assimilate this information in the record, he is going to have to make an estimate of what he thinks it is, in order to respond properly to your testimony. And I wondered (1735) if you could help him in that respect by indicating that if the supply response is found or decided or determined by the Secretary to be inelastic, in that case would it not be true that your

northern Vermont producers would be better off by having a higher price?

In other words, would it not be true that their total income, then, would be improved by a higher price, facing an inelastic supply curve? Is this not the doctrinaire principle? A. My memory isn't sufficiently sharp this morning on the few bulletins I have read on supply response to answer.

Q. Then I think we can end this session with this question.

On this basis, you leave it up to the record to make this determination, and hope that a determination will be made such as to maximize returns to your producers, whatever the case may be? A. I'm anxious that the determinations that the Secretary makes will be in the best interests of all producers in the long run.

Q. So that if the Secretary should determine or find, on the basis of this record, that the supply responses brought about effects different than you indicated in your answer to Dr. Johnson, you would like him to reverse your judgment on that and maximize price? This is your consideration? A. You are asking me what I hope. I hope that he finds that there is a great need for research to be done on this (1736) question of supply response, given the rather new set of production conditions that have been brought about by the revolution in dairy farm technology that we have been seeing for the past few years, and not on the basis of some dusty research experiment station bulletins on supply response which tried to derive supply response information at a time when these conditions were quite different.

Q. In view of further delving into this matter, would you still want to maintain the answer you gave to Dr. Johnson, or would you want to qualify it. A. I wouldn't want to qualify it from the stand new, no. I have indicated time and again that I think it is a matter that we all ought to be giving a lot of intensive study to, and not speculating on at this time.

Q. Did I not understand you to indicate to Dr. Johnson that if the differentials were lowered and if prices were balanced between New England markets and New York, then you would have a reduction of supplies in these markets, and the supplies would be fulfilled by substitution or transfer of milk from the New York market, which in turn would reduce the blend prices to producers in this area and be to the detriment?

I am saying in view of further delving into this, would you still want to maintain that answer? Or would you want to qualify it? A. No, I wouldn't want to delve into that area of prophesy. (1737) For all we know, the Congress of the United States might institute a quota production control plan, which would prevent the increase in production effectively, and a whole new set of production conditions could be brought about sometime this year, 1963, that would upset any—

Q. So it is all pretty indefinite? A. Yes.

Examiner Holstein: Is that all, Mr. Pelley?
Anyone else?
Dr. Johnson.

By Dr. Johnson:

Q. You have been answering questions concerned with supply response. Are there two general types of supply response, namely, production response of given producers, or of producers within a given area? That is one; and the other, the response in the way of the shifting of given production or supplies among markets? A. Yes. And I thought that I made that clear in my original statement, Dr. Johnson.

Q. Comparing the two types of supply response, the production response and the shifting among markets, and thinking of them in terms of the short run, of a few months or one or two years, and thinking of them in terms of milk in the Northeast, in which type do you find the greatest price elasticity?

Mr. Pelley: Mr. Hearing Officer?

(1738) Examiner Holstein: Is this a clarification question?

Mr. Pelley: Yes.

Examiner Holstein: In other words, you do not understand Dr. Johnson's question? Is that right?

Mr. Pelley: It is partially an objection, I suppose, to the nature of the question, in asking the witness, now, to make a judgment between something that he knows not of and something that he may know of.

He may know of the inter-area response curve, but he has indicated that he did not know the character of the producer supply response, whether it was elastic, unity, or inelastic, in this range, and I would not want him to over-burden the witness now with this kind of a comparison.

Examiner Holstein: I would be extremely puzzled now to describe exactly what it is the witness said he did not know and what he said he did know. But objection on the ground that the witness does not know the answer to a question is not an objection.

If Mr. Lee knows the field which is being explored by Dr. Johnson, he may answer, and if he does not know, he can say he does not know. And if you assume a discrepancy between what Mr. Lee assumes to know now and what he assumed to know when he was answering your questions, you can explore that area further when you get to it.

So the objection is overruled, and he may answer, if (1739) he knows.

The Witness: I would say that the more significant response is that which comes following the short period of change in price. I think in the short run, farmers may even make changes in response to price which don't

seem to make economic sense. But if the change persists, we see the whole dairy farm picture change.

So that I think the answer to Dr. Johnson's question is that given more than this short run time for adjustments to take place, there would be significant price changes.

By Dr. Johnson:

Q. If the market response, the shifting of supplies among markets through a price increase, occurred rapidly, as contrasted to a response of farmers in changing their milk output, would that not tend to affect the power position of New England cooperatives relative to New York adversely more than if the reverse were true? A. I believe the answer is "yes." But I don't wish to comment on the power position of our cooperatives in New England versus our neighbors in New York.

Dr. Johnson: That is all.

Examiner Holstein: Mr. Chernauskas, did you have a question?

By Mr. Chernauskas:

Q. In your direct testimony, you mentioned something (1740) to the effect that if the nearby location differentials were removed, and the price in that area went down—I think you mentioned 32 cents as a figure—producers in that country— A. Up-country?

Q. They would go up 32 cents, up-country? A. To the present Boston producers.

Q. All right. And the producers presently receiving the nearby differential would have a price reduced by that amount? A. No. Not that precise amount. No.

Q. Well, it would be reduced? A. It would be reduced from what they are now in Worcester and Connecticut and Southeastern New England, yes.

Q. Well, there would be a reduction. And you said on the basis of that many of these producers might

decide to go into the jug business. Was that your statement? A. Yes.

Q. And if they went into this jug business, they would be distributors distributing their own product? A. Yes.

Q. And to that extent they would have to have processing facilities? A. Or they would have to have the milk processed for them.

Q. Well, they would either become producer-distributors or producer-handlers? A. Yes.

(1741) We have already seen instances of farmers who have gone into the jug milk business, selling milk right from the farm to the neighbors.

Q. Well, would this reverse the trend? The evidence presently shows the producer-distributors and handlers declining over the years.

Mr. Hall: Will you speak a little louder so that I can hear you?

Examiner Holstein: I will ask Mr. Chernauskas and Mr. Lee to speak up.

The Witness: Yes, I can visualize many farmers striving desperately to maintain their incomes by distributing their own milk. And it seems under present conditions that the gallon jugging operation is the least expensive way that they can get into that distribution business.

By Mr. Chernauskas:

Q. Can you tell us if there is any significant difference in cost of production—

Examiner Holstein: Part of the difficulty here is because of the murmer of conversation. I do not like to restrict your conversation, gentlemen, but it makes it very difficult for those in the back of the room to hear your questions and the answers.

Will you ask your question over again, Mr. Chernauskas?

By Mr. Chernauskas:

(1742) Q. Can you tell us whether there is any significant difference in the cost of production of a producer in the socalled nearby area and a producer located in the up-country area? A. It has been my understanding down through the years that farm management studies do show that the costs of production are higher in southern New England.

Q. Well, do those studies indicate that if there is that difference in cost, the difference approximates the nearby differential? A. Mr. Chernauskas, I happen to be one of the economists who subscribes to the belief that cost of production on dairy farms is not a suitable basis for concluding what prices should be to producers.

Q. Well, actually, the intent of my question was to find out why these nearby producers would go into the extra curricular business if they received this lower price. And from what I gather from your testimony, you are indicating that somehow or other they need that nearby differential in order to continue to exist. And I was trying to explore why they needed it, and why, if they lost it, the results that you say will occur, will occur. A. We have had testimony from Walter Lewis. And I will leave it there. I do know that there is a short-run, anyway, tendency for producers, whether they be located in southern (1743) New England, or northern New England, for whatever reason their blended price is reduced, in view of their fixed commitments for income, who take any and every measure to try to maintain their income.

That is why I believe that faced with a loss of something approaching a cent a quart, they would attempt to realize a higher return by selling their own milk at resale. And I say that even though resale margins have been under some pressure.

Q. You also indicated that they would lower their production or go out of production, as I understand it.

A. The problem has both a short run and a long run aspect. Eventually, they will probably give up the ghost. We see at the present time, within the past couple of years, the phenomenon of up-country producers evening up their production quite sharply in order to increase their returns.

Only time will tell whether these farmers who have decided to make less milk on pasture and more in the fall and winter months will increase their income sufficiently to stay in business.

In view of rising costs of production factors, it seems to me that what we have had developing is a situation in which many producers are going to extreme lengths to increase their income by shifting in the direction of more fall and winter milk.

Q. Well, you say that is occurring presently? (1744)
A. It has been for the past two or three years.

Q. Have you any reason to believe that that process will be discontinued if the nearby differentials are removed? A. I would say that there would be less pressure on farm families in the north country to make what eventually might turn out to be a bad allocation of their resources by shifting to more fall and winter milk, simply because their costs are up and their blended price—

May I have your question read back?

(The pending question was read by the reporter.)

The Witness: I think there would be less pressure on them to take such extraordinary measures to increase their income, yes.

By Mr. Chernauskas:

Q. Well, you indicated that your prognosis would be that there would be a short-run increase in price in the up-country, and that will result in over-production and eventually a lowering of the price.

Mr. Hall: I do not like to complain, but this is a private conversation, and if it is on the record may we hear it?

Examiner Holstein: Will you read it?

(The question referred to was read by the reporter.)

By Mr. Chernauskas:

Q. And if the price lowers, the up-country producers will again be under the same pressure they are now. Is that (1745) not true? A. Yes, they would.

Q. And then would they not do the same thing they are doing now, that you describe, taking these measures? A. Yes.

Q. In response to a question of Dr. Johnson's, you indicated that eventually you thought that perhaps the blended prices of the New England markets would equate or be comparable to the New York prices, and that would encourage an influx of milk from New York, with the result that it would encourage producers in New England to go out of business or cut down their production. I think that is what you stated. Is that right? A. Yes, it is.

Q. Now, assume that the prices for the New York producers and the New England producers are the same. Would the decisions that would have to be made by a New England producer be any different than those which would have to be made by a New York producer, as to remaining in production or not? A. No.

Q. Then can you tell us why the New England producer would go out of business and the New York producer as to remaining in production or not? A. No.

Q. Then can you tell us why the New England producer would go out of business and the New York producer remain in business?

Mr. Hall: I do not like to keep objecting, but this is getting, from my point of view, pretty far

out in the realm of speculation and guessing.

Examiner Holstein: Well, we have had a lot of guessing (1746) here. Let's have a little more.

Mr. Hall: I know we have had a lot, but I have objected to it from time to time as being highly improper and adding nothing to the record that would help the Secretary. And while the Administrative Procedure Act says that any evidence can be received, whatever it might be, and for whatever source; nevertheless, in determining the answers which the fact finding body must make, it must be based on evidence that is relevant, pertinent, and material. And I would like to strongly urge the Hearing Officer that this is neither relevant, pertinent, nor material. It is speculative.

Mr. Chernauskas: Mr. Examiner, I am the last one to try to burden the record with irrelevancies. I think I have been objecting along that line to try to keep the record straight. But I think it is important that this witness did make the statement, and that is his expert opinion as to the result; and I was endeavoring to find out the basis of his conclusion in that regard.

Examiner Holstein: Mr. Hall, we are in the area of economic opinions, than which there is no more shall I say vague field. I do not know where to separate fact from estimate, and I am sure you cannot draw a sharp enough line for me which would enable me to say yes or no.

I am going to overrule this objection.

Mr. Hall: May I state a further objection on the record?

(1747) Mr. Hall: In response to your ruling.

Examiner Holstein: Mr. Hall, just a moment. I do not want to restrict anyone, but we need not get into a debate on every objection. The rules of practice provide that you should state the grounds

for your objections briefly.

Now, you can say that a question is either irrelevant, immaterial; but state your grounds briefly. If I want enlargement, I will ask for it.

Now, what are the grounds?

Mr. Hall: The statement that you have made—

Examiner Holstein: Never mind the statement I have made.

Mr. Hall: May I preface my statement?

Examiner Holstein: I want to hear your objection first. I would like to know what you are talking about before you get into it.

Mr. Hall: I am objecting to this line of inquiry as being purely estimate, speculation. The ruling which you have made is that, this being economic testimony, you cannot distinguish between fact and estimate and speculation.

When the question is based upon a statement of, "Do you estimate," or opinion—that is not fact.

I have stated my objection, and that is it.

Examiner Holstein: The objection is overruled.

The witness may answer the question, if he remembers it.

(1748) Do you?

(The pending question was read by the reporter.)

The Witness: I didn't say as a result of a change in the price structure in New England, New York producers would go out of business, any more than they are at the present time going out of business. Producers in both regions, some producers in both regions, are going out of business currently all the time.

Examiner Holstein: Maybe I can save some time for this record.

I did not understand your question to be based on New York producers going out of business, but upon New England going out of business and New York producers staying in business.

That is the question.

The Witness: Under the present price structure, the line of indifference as to which market to ship to on the part of producers in the country overlapping to the west of New England is closer to New England under the existing price structure, and that that has prevailed down the years, than it would have been without the farm location differentials.

I think I will let it rest there.

Mr. Chernauskas: I have no further question.

Examiner Holstein: Mr. Cobb?

By Mr. Cobb:

Q. Mr. Lee, in your testimony in regard to these nearby (1749) farm location differentials, do you justify them essentially on the premise of when they have been paid historically, and that based on the fact that they have been paid historically, nearby producers have made some investments based on the fact that they get these nearby farm location differentials? Is this basically what you feel is a justification for these differentials at the present time? A. Yes, I do. And I would go further to say that, that being true, it would be logical even if we could conclude that times have changed sufficiently, and factors that should be taken into account in the price structure have changed sufficiently, that a change should be made, either a sharp reduction or elimination of the differential, that considerations of equity would require that a program for the gradual reduction, maybe over a 10 or 15 or 20 year period, in that differential, could be and should be made.

Q. I believe maybe you have answered my second question, then, but I will ask it anyway.

Then would it be your recommendation that if the Secretary did decide that nearby farm location differentials perhaps are no longer justified, your recommendation would be that they not be eliminated abruptly, but

that perhaps a gradual reduction in the nearby farm location differentials take place, so that nearby producers would haves a chance to adjust to the new conditions? (1750) A. First of all, I want to say that it is pure coincidence that our statements have been as they are at this time. Mr. Cobb and I have not discussed this question at all at any time.

And, yes, I strongly feel that there should be only a gradual adjustment in price, due to a contemplated eventual elimination, if that should be the conclusion that should be taken. And that the speed of the reduction could well be one of the topics for extensive research on this whole question.

Examiner Holstein: Is that all, Mr. Cobb?

Mr. Cobb: That is all.

Examiner Holstein: Mr. W. T. Smith.

By Mr. W. T. Smith:

Q. Mr. Lee, just one or two more questions in regard to this problem of farmers in New England or New York going out of business.

Is it not true, Mr. Lee, that the decision as to whether a farmer were to continue in business or go out of business is an individual matter in the individual case? A. Why, yes.

Q. And might that decision not be based very largely on the individual set-up of that particular farm? A. It certainly would.

Q. And is there not a decided difference in the make-up of the typical New England dairy farm from that of the typical New York dairy farm? (1751) A. I wouldn't want to answer that. I have driven through all New England dairy farm country, and I have driven across New York State to Buffalo, and I am not sufficiently acquainted with New York State's dairy farms, although as a boy of eight I lived on one, to answer that.

Q. Well, would you not agree, Mr. Lee, that many, many dairy farms in New York are of rather large size, with a number of enterprises—the selling of hay, the selling of livestock, the selling of even some grains, as compared to very little of that type of enterprise in New England? A. I do know that New England is on the end of the grain line, the feed line, and has to pay higher prices for grain. I know that New England dairy farmers purchase practically all of their dairy feed for concentrate and in New York State a very substantial percentage of the grain fed to dairy cattle is grown on the dairy farms.

Q. In other words, the New England dairy farmer is a specialist in the production of milk, rather than making it a general enterprise, such as is true in many New York farms? A. I think it is a question of the proportion of dairy farms in New England that are highly specialized, and those in New York. I think, in fact I knew, the proportion is higher in New England than in New York, because I have seen evidences of agricultural enterprises other than dairying on dairy farms in New York State. But I can't think of a commercial dairy farm in (1752) New England that has a beef cattle enterprise and possibly some either fruit or some other enterprises along with the dairy.

Q. Well, if your total income were being derived from the dairy enterprise, and there was a sizeable drop in the prices that you were receiving for your product, you would be more apt to go out of business than if you had other sources of income on that same farm, would you not? A. Alternative sources of income would be a definite factor in deciding whether you would go out of the dairy business, yes.

Examiner Holstein: Anyone else?
Mr. Pelley, I believe.

By Mr. Pelley:

Q. In regard to that question, do you happen to be acquainted with the dairy farm of Mr. Stanley James of Vermont? A. No.

Q. So that I can understand your answer to this last question better, I will say that Mr. James I think is one of the larger apple growers in Vermont, plus he keeps about 60 head of milking cows.

Now, would you think that that is the only farm of that type in Vermont? A. I know that MacIntosh apples are grown in the Connecticut Valley, but I hadn't observed that it was in conjunction with dairy farming. I was thinking of Connecticut Valley orchards, (1753) a very extensive MacIntosh apple producer.

Q. Do you think this is the single exception to your rule? A. I wouldn't want to say that, because I have not toured in the course of my duties with the Market Administrator over the past 21 years over the roads and by-ways of Vermont to an extensive extent, to a great extent.

Examiner Holstein: Mr. Garelick.

By Mr. Garelick:

Q. Mr. Lee, you are 21 years in the Market Administrator's office. Would you say that the principal reason for putting in Federal orders in New England has been the competition from unregulated sources of supply? A. Yes, and I have so testified.

Q. Is it not true that over the years the milk which has been closer to the markets has been principally supplying the Class I needs? In other words, does not milk which is closer to market normally go into fluid consumption, and the milk which is up near the Canadian border goes into manufacturing? A. To the extent that there are departures from that, I would agree that the conditions should not exist.

Examiner Holstein: That is an honest question. If you can answer his question, do so.

Do you remember the question, Mr. Lee?

The Witness: The answer is "yes."

(1754) By Mr. Garelick:

Q. Now, has it not been true, or is it not true, that when these orders are put into effect, the farmers who get a chance to vote for or against the order are the farmers who are currently supplying the market at the time the promulgation order is under consideration? A. Yes, and I mentioned that, too.

Q. All right. Now, such being the case, is it not also true that local producers have voted for these orders, because they have been willing to sacrifice some of their Class I sales in return for the protection against unregulated supplies? A. Yes.

Q. Now, would you say that the acreage on farms in Vermont is considerably higher per farm than the acreage on farms in Massachusetts? A. Yes. Many farms in Massachusetts have only exercising lots for the cows.

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[1759] MR. PELLEY: It is in relationship to the witness's testimony to the effect, in response to different questions, first of all, that New England dairy farms are more concentrated single enterprise farms than is true with the New York milkshed; that New England farms, as a generality, have fewer alternatives. This has been put into the record by the witness. I want to examine the witness in more detail with respect to this to find out—

EXAMINER HOLSTEIN: Thank you. You have said enough to give me an idea of how you connect the two things.

[1760] Now, Mr. Hall, do you want to be heard further?

MR. HALL: The only comment I want to make is on the basis of Mr. Pelley's admission that his question had nothing to do with the issues.

EXAMINER HOLSTEIN: No. That is what I thought he said, but–

MR. HALL: That is the impression I had. And he also was a little critical, if I may be so bold as to say, that you in your capacity as the Presiding Officer at this session have let in a lot irrelevant testimony, which I did my best to get out.

MR. PELLEY: I object to that characterization and move it be stricken from the record.

EXAMINER HOLSTEIN: Well, we do not generally strike things from the record unless it is scurrilous. I do not think this went that far.

MR. HALL: It was not intended to be that.

EXAMINER HOLSTEIN: This is an example of the amount of time that can be spent by debating the question rather than letting the witness go ahead and answer it.

MR. HALL: Especially when he is going to say, "I don't know."

EXAMINER HOLSTEIN: Now for the objection.

I do recall that Mr. Pelley did mention the characteristics of certain New England farms, of New England farms in [1761] general, in connection with his discussion of the question of farm location differential.

On that basis, Mr. Pelley's question is material, and the objection is overruled, and Mr. Lee may answer the question if he can remember it.

THE WITNESS: I remember the question.

EXAMINER HOLSTEIN: Good.

THE WITNESS: I will answer it this way: that my analyses of dairy farm management records have been limited to those that I studied at the University of Massachusetts many, many years ago. And I recall that at that time specialization in dairying had advanced to a great degree in Massachusetts, a much greater degree in southern New England than it had in northern New England.

For two years I did land use planning work for the Extension Service in Massachusetts, and traveled extensively throughout the state, and met with groups which included the intelligentsia among the dairy farmers in Massachusetts in many parts

of the state, and at that time there was great impetus to urge all dairy farmers in Massachusetts to become highly specialized.'

Now, I would not want to enter into a discussion with you as to the extent to which the proportions of highly specialized dairy farms in southern New England versus those in northern New England have changed since that time.

[1762] By Mr. Pelley:

Q. From your study of the agriculture of the area, and the general organization, my specific question was: Do you find a dispersion among this totality of areas, where there are, first of all, other alternative enterprises, and then are there dispersions of the application of adoption of it?

MR. CHERNAUSKAS: I am going to object to that question, because it is based on the primary response of the witness, and the witness indicated that his study was made years and years and years ago, and he has not shown any relation to that in present day conditions.

EXAMINER HOLSTEIN: I think I will sustain that.

I think the witness indicated in short he could not answer the question. That was the sum and substance of what he said.

MR. PELLEY: Mr. Hearing Master, how am I going to interpret the prevous answer that he gave to the effect that in generic generality New England consisted of specialized dairy farming enterprises? And then if he begs off of interrogation within that realm on the basis of lack of knowledge, where are we? Am I precluded then from finding out how little he knows?

EXAMINER HOLSTEIN: Well, he has told you that he does not know. So how much further can you go? You ask me what you can do. You can make the most of it in your brief.

* * *

[3392] JAMES D. LEE

was called as a witness, and after having been first duly sworn by the Hearing Examiner, was examined and testified as follows:

THE WITNESS: NEMPA is strongly opposed to the elimination of reduction of farm location differentials suggested in Proposal 52.

Farm location differentials are deeply imbedded in the New England orders, and the New York-New Jersey order, and have been since the inception of the various orders. They have been in the Boston order since August 1, 1937, a period of more than 25 years, and in the other New England orders since their inceptions at the existing rates of 46 cents and 23 cents, depending upon nearness of farm to market. Part of the testimony on this subject at a public [3393] hearing held in June-July 1937, given primarily by Mr. Wesley H. Bronson and by the Late Mr. John L. Carten, Jr., is summarized in the Market Administrator's Review for August 1962. (Exhibit 24) Later I shall review the details on farm location differentials brought out at this hearing.

Such payments have been justified over the years as a recognition of the historical pattern of prices which existed prior to regulation, or as compensating nearby producers for sharing a part of the fluid milk market which they formerly enjoyed, with producers more distant from the market. They have the opportunity to go into direct distribution reducing pool Class I sales. They do not create, nor are they expected to carry, the same proportion of surplus as the more uneven, distant producers. Base ratings might be used to accomplish this same result, but they have been unacceptable for many years. They did receive higher prices under the conditions prevailing before Federal regulation, and the regulation recognized this fact. The higher prices realized by nearby producers for their milk have been capitalized into farm values. We believe it is neither equitable nor necessary to undertake to remake the structure of milk prices in New England or New York, as between the nearby and distant producers.

There appears to be a notion that nearby differentials have a widely different effect as between Boston and [3394] other

Federal order markets of New England. Apparently they are acceptable if they apply to a relatively small proportion of the milk, but otherwise they constitute an unwarranted "burden" on the pool. In Boston, nearby differentials apply to about seven per cent of the milk in the pool. They apply to a much larger proportion of the milk in other markets of southern New England for the simple reason that there are relatively more nearby producers. Yet their effect is the same in each of the five markets, to establish a particular pattern of relationship of prices as between nearby and more distant producers, which is identical for the five markets.

* * *

[3397] Farm location values per hundredweight of milk received from all producers in 1962 amounted to about $.033 in Greater Boston, $.434 in Connecticut, $.272 in Southeastern New England, $.428 in Springfield, and $.341 in Worcester. The total values given in Table 2 show that producers eligible for location differentials "contributed" to their own differentials at the rate of seven per cent in Greater Boston, 96 per cent in Connecticut and Springfield, 59 per cent in Southeastern New England, and 74 per cent in Worcester. The average for Boston, Springfield and Worcester was 62 per cent while that for the five markets was 79 per cent. For the three markets the value from distant producers amounted to $877,486 of the $2,325,627 value of location differentials. For the five markets the "contribution" from distant producers amounted to $1,797,130 of the $8,670,032 value of location differentials. Expressed as rates per hundredweight on their own milk these values from distant producers amounted to about $.043 a hundredweight for Boston, Springfield and Worcester producers, on the average, and to about $.077 a hundredweight, on the average, for the five markets.

If, as NEMPA has proposed, the Greater Boston, [3398] Springfield, and Worcester markets are consolidated into a "Massachusetts marketing area," the value of "Own Contribution" would drop, using the 1962 data in Table 2 for the sake of illustration, from $1,448,141, to $474,757, or from rates of about $.279 to $.091 a hundredweight. On the other hand,

the value from distant producers would rise from $877,486 to $1,850,870, or from about $.043 to $.091 a hundredweight. In a five-market consolidation, the value of own contribution would drop from $6,872,902 to $3,905,575, or from about $.358 a hundredweight to $.203 a hundredweight, while the value from distant producers would rise from $1,797,130 to $4,764,457, or from about $.077 to $.203 a hundredweight.

* * *

[3403] Whether for separate New England markets or any combination of them, elimination of farm location differentials would misalign blended prices.

At this time I should like to call attention to a [3404] compilation of the material concerning returns to nearby producers which is included in Dr. Gilbert R. Barnhart's, Doctor's thesis. Mr. Barnhart, while a graduate student in the Department of Government, Harvard University, was employed by the Market Administrator of Order No. 4 on a part-time basis because his thesis work was of great historical interest. Covering the years before USDA issued recommended and final decisions which describe and explain the milk marketing issues and actions concerning them, Dr. Barnhart's thesis is entitled "Federal Regulation of Milk Handling in Boston, 1933-46. The Development of the Licenses and Order Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, November 3, 1933–June 1, 1946." The thesis was prepared for–and I might add, with the assistance of–the Market Administrator. I have excerpted and had mimeographed all sections pertaining to nearby producers, and I wish to offer this 9 page compilation of excerpts as an exhibit.

EXAMINER HOLSTEIN: The document to which Mr. Lee refers will be marked Exhibit 77A for identification.

(Exhibit No. 77A was marked for identification.)

MR. TIPTON: Mr. Hearing Examiner, I would like to object to the inclusion of these documents as an Exhibit because the individual who prepared the statement that is [3405] included in the exhibit apparently is not available for cross-examination and I doubt if he can be produced for cross-examination.

EXAMINER HOLSTEIN: Mr. Lee, what is your purpose in offering Exhibit 77A? Do you intend to make it a part of your own testimony in connection with your testimony on Proposal No. 52?

THE WITNESS: Dr. Barnhart's thesis contained an authoritatively prepared record of the early history of the Federal Milk Order Program in the Greater Boston Market.

EXAMINER HOLSTEIN: Does it contain any expressions of opinion, conclusions?

THE WITNESS: It does not. The material that I have quoted is descriptive of the terms of the provisions of the early licenses and insofar as I know does not include any opinions of Mr. Barnhart. If there are, I would just as soon that they themselves not be included in the record.

EXAMINER HOLSTEIN: I am not aware that any comments of his could be so classified. I believe Mr. Tipton himself has referred to Dr. Barnhart's thesis in his own testimony on this subject.

MR. TIPTON: In regard to opinions expressed, I think there are some interdispersed throughout here. I haven't had a chance to review it all, but I find one on one page, the second paragraph of the first page, same expression [3406] of opinion, beginning with the first sentence of that paragraph. As I say, I haven't had a chance to–

THE WITNESS: In my statement, I am not quoting all of Dr. Barnhart's statements.

EXAMINER HOLSTEIN: In your Exhibit 77, which you are in the process of reading, I notice that there are various quotations from statements made by other persons. Do any of those–are any of those quotations taken from Exhibit 77 Mr. Barnhart's thesis?

THE WITNESS: Yes, there are some direct quotations from that material.

EXAMINER HOLSTEIN: Well, with reference to these, the direct quotations which you have incorporated in Exhibit 77, do you intend to adopt those as your own viewpoint?

THE WITNESS: Yes.

EXAMINER HOLSTEIN: I will reserve ruling on Mr. Tipton's objection until we have a chance to examine Exhibit 77-

A a little more closely. You may proceed with your testimony reading Exhibit 77. In the first place, I overlooked procedure. Exhibit 77A has not been offered, it has merely been identified, so your objection was a little bit premature. He hasn't offered it yet. The witness hasn't yet offered it. He merely asked that it be identified. Go ahead.

THE WITNESS: In the first excerpt in Exhibit 77A, [3407] it is recorded that under License 15 ". . . producers whose milk on September 1, 1933, was being trucked directly from farms to plants located in the marketing area or was being distributed in the market by the producers who retained their cooperative association or handler bases, or if no such bases existed, were allotted bases equal to 90 per cent of their average daily deliveries of milk during the general base period (September, October and November, 1932) or any part thereof, or if no deliveries were made during the general base period, 90 per cent of their average daily deliveries for the first 90 days of deliveries or part thereof elapsed on September 1, 1933; . . . Producers not covered by an exceptional class and who delivered milk or cream during the general base period received bases after the computations were completed, equal to 64 per cent of their average daily deliveries during the general base period." It is pointed out that under License 38 the Market Administrator, "acting under his power to revise bases to maintain equity among producers, allotted preferential bases to nearby producers to give effect to the historically higher prices they had received in the market. A study was made of the eight years 1926 to 1934 to obtain the proper differential between nearby and distant producers' returns from the sale of milk. It was determined that all producers whose milk was delivered directly to plants located within 35 miles of the State House in Boston should [3408] have bases equal to 85 per cent of the higher of their daily average deliveries in the alternate base periods."

In the excerpt beginning on page 2 of Exhibit 77A, it is recorded that NEMPA has introduced a base rating plan in Boston in 1930. It recalled hearing testimony by Reginald W. Bird, representing the Massachusetts Producer's Advisory Com-

mittee and in general nearby Massachusetts producers, suggesting that nearby producers be those located within a 30 mile limit from the State House in Boston, and that they bear only the surplus which they created.

In the excerpt beginning on page 4 of Exhibit 77A, it is recorded that "Effective March 16, 1935, an administrative change of considerable significance took place in the percentage applied in the establishment of nearby producers' bases. Before this date producers whose farms were located within 35 miles of the State House had been assigned bases equal to 85 per cent of their average daily deliveries in September, October, and November, 1933, or 85 per cent of their average daily deliveries for the entire calendar year 1933, whichever amount was greater." In an effort to gain enforcement support from the Massachusetts Milk Control Board "the cooperative associations agreed to allow to producers whose farms were located within 40 miles of the State House bases equal to 100 per cent of the higher figure yielded by the two alternatives mentioned above. These bases became [3409] effective March 16, 1935.

In the excerpt beginning on page 5 of Exhibit 77A, it is recorded that Order No. 4 did not provide for preferential bases to nearby producers and reduced their bases about 25 per cent. "Nearby producer differentials under the order took the form of a guarantee of payment of the city plant Class I price of $3.30 per hundredweight for all delivered base milk testing 3.7 delivered by producers whose farms were located not more than 40 miles from the Boston State House to handlers' plants located not more than 40 miles from the State House."

In the excerpt beginning on page 6 of Exhibit 77A, it is pointed out that provision for payment to nearby producers the Class I price of $3.30 for base milk "had been necessary under the base rating system as set up after February 9, 1936, to make a real differential effective to these producers. The amended order (as of August 1, 1937) having omitted base rating, converted this provision into one providing, in paragraph 4, section 4, Article VIII, for payment of 46 cents per

hundredweight in addition to blended prices to producers whose farms were located within the 40 mile zone. Deliveries to plants located within the zone was omitted as a condition and the differential was thereby converted into one depending solely on farm location." Reference is made to testimony at the hearing preceding the [3410] August 1, 1937 amended Order No. 4 by Mr. Wesley H. Bronson, then of the NEMPA, and the late Mr. John L. Carten, representing the Nearby Milk Producers Association which led to the establishment of the farm location differentials. In this excerpt it is recorded that the Dairy Section had proposed the amendment which recognized the price advantage that intermediate producers had enjoyed long before the regulation had taken effect in the market and which the base rating system had recognized by the allocation to them of high bases. When base rating disappeared from the order, some other provision had to be substituted with respect to intermediate producers, or the order would operate to their disadvantage."

The last two excerpts appearing on pages 8 and 9 of Exhibit 77A, record that the nearby differential was, for a time, extended to producers whose farms were located in Barnstable and Plymouth Counties, Massachusetts, and "that the total price payable to both nearby and intermediate producers be limited to the zone Class I price payable at the plants at which their milk was received."

At this time I should like to offer as an Exhibit photocopies of 26 pages in the record of the hearing which immediately preceded the issuance of Order No. 4 as amended effective August 1, 1937. It includes all of this hearing material cited by Dr. Barnhart in his sources concerning the establishment of the amounts of the farm location [3411] differentials. Because of its importance to our present proceedings I feel that this record should contain this basic information in its original form.

MR. CHERNAUSKAS: I am going to object to that, Mr. Examiner.

EXAMINER HOLSTEIN: I won't accept the offer of the exhibit now. I will mark it for identification so we know

what we are talking about when we hear objections and hear rulings on it. Exhibit 77B for identification.

(Exhibit 77B was marked for identification.)

MR. TIPTON: I would like to also join in that objection and also point out that–

EXAMINER HOLSTEIN: Objection at the moment is out of order because I am not considering an offer.

MR. TIPTON: I would like to make one other comment then, if I may.

EXAMINER HOLSTEIN: Is it in the nature of an objection?

MR. TIPTON: It is in the nature of support of this, but not directly.

EXAMINER HOLSTEIN: All Mr. Lee has asked for at the moment and all I will consider at the moment is a request to identify a document. You can't object to that.

MR. TIPTON: My statement then relates to orderly [3412 procedure, a clarifying question.

EXAMINER HOLSTEIN: All right.

MR. TIPTON: That is that he has quoted from excerpts from what has been marked for identification as 77A and also I know that there are quotations throughout the presentation from what is marked as 77B. Therefore, I would think that it would be appropriate to make a determination as to whether the items are offerable as Exhibits at this time, whether to let the quotations go in and then have to make a motion to strike or something along this line.

EXAMINER HOLSTEIN: Well, I can't do that until I examine the material closely. I think that the best procedure here will be to let it go in. I agree with you that there are so many references and cross references back and forth that it would be difficult to make that kind of determination at the present time. It is marked for identification. Mr. Lee has already quoted at length from what has been marked for identification as 77A and I know that in the event that 77A is ruled not admissible, that those quotations will have to be ignored, but I don't know how else to handle this since it is quite complicated because of the cross references back and

forth. Mr. Lee, perhaps you can tell me at this point, in the balance of the testimony which you are reading from Exhibit 77, will you quote excerpts from the Hearing record?

[3413] THE WITNESS: Yes.

MR. CHERNAUSKAS: Mr. Examiner, I am going to object to this line of testimony from here on in. He is going into the–

EXAMINER HOLSTEIN: Excuse me.

MR. CHERNAUSKAS: The witness is going into a prior record and taking excerpts of testimony from that record of witnesses and drawing conclusions from them. I notice that the great bulk of his testimony are quotations of the testimony of those witnesses. Now, actually, that record was composed of the testimony of a considerable number of witnesses and I imagine, I don't know what the actual record contained, but I imagine that it contained conflicting testimony and opinions on the topic, and I would say that the best evidence of why location differentials, nearby location differentials are in the order would be the decision of the Secretary in explaining why he put them in there.

THE WITNESS: I have not excerpted from the record only certain parts of the testimony on nearby farm location differentials, but went through the record and took all of the information on nearby farm location differentials that appeared in the record. I didn't excerpt it.

EXAMINER HOLSTEIN: What you are saying now is that what has been Marked Exhibit 77B consists of all testimony in that hearing record with reference to farm [3414] location differentials?

THE WITNESS: That's right.

MR. CARROLL: Has the witnesses' statement been given a number?

EXAMINER HOLSTEIN: Yes, it is 77. In reading that statement, the witness has made reference to various excerpts from a document which has been identified as Exhibit 77A consisting of a thesis by Dr. Gilbert R. Barnhart. The witness now has asked that this be identified as 26 pages of testimony on the hearing record of the hearing which preceded the issu-

ance of Order No. 4 and the testimony that he is reading from Exhibit 77 will likewise quote excerpts from what has been identified as Exhibit 77B.

It is getting quite complicated. I think we will have a recess for 10 minutes.

(Brief recess.)

EXAMINER HOLSTEIN: The hearing will please be in order. Due to numerous references in Mr. Lee's testimony, not only that part which he has already given, but in the remainder of the material appearing in Exhibit 77, due to the numerous references in that testimony, and excerpts from what have been identified here as Exhibits 77A and 77B, I will reconsider what I said previously about procedure and conclude that it is best to determine whether or not Exhibits 77A and 77B are admissible at this time before Mr. Lee continues [3415] with the balance of his testimony since he will refer in the balance of his testimony to these excerpts which are in these two documents which are under question at the moment.

I might ask Mr. Lee if there are any additional documents from which you will take excerpts or make reference in the balance of your testimony?

THE WITNESS: No, there are not.

EXAMINER HOLSTEIN: At this point, I might indicate to anyone else who has prepared statements of this type that they request that any such documents be identified at the beginning of their testimony so we know what will be offered in the course of that testimony as exhibits.

Mr. Tipton, you entered an objection to 77A is that correct?

MR. TIPTON: Yes, sir.

EXAMINER HOLSTEIN: And Mr. Chernauskas entered an objection to 77B?

MR. CHERNAUSKAS: Mr. Examiner, I think one of the points I made on my objecton is that the best evidence of why a particular provision is in the order would be the decision of the Secretary. However, I am advised now that back in the days when this came out, the Secretary was not issuing decisions explaining or justifying each of the provisions and

so it is not possible to have official notice [3416] of the decision. This is quite irregular procedure to refer to testimony of a prior hearing and ordinarily I would strenuously object to it and in fact, we have always objected to having testimony of a prior hearing incorporated into a present hearing, but in view of the circumstances here, I withdraw my objection.

EXAMINER HOLSTEIN: All right, then, the objection to 77B is withdrawn.

MR. TIPTON: I still have an objection to 77B.

EXAMINER HOLSTEIN: You also objected to 77B?

MR. TIPTON: Yes, sir.

EXAMINER HOLSTEIN: All right, just so we understand, did you state, Mr. Lee, or did you not, I don't recall at the moment, whether the various references that you incorporate in your testimony are being adopted by you as your own testimony here?

THE WITNESS: In the sense that I wish to give a—historical account of the basis for the location differentials, I do.

EXAMINER HOLSTEIN: All right, sir. Whether or not these documents are admissible is not without doubt. I have some question as to whether either one of them is. I have less question on Exhibit 77A, that appears to be for the most part an historical—did you want to say something, Mr. Tipton?

[3417] MR. TIPTON: Yes, sir, I would like to. In regard to 77A, I pointed out one place in which I thought there was very definitely an expression of opinion on the part of the individual who compiled the thesis. I also note that there is excerpts taken from witnesses who appeared at a hearing and this than is further interpreted by the author of the thesis and I also note that on page 4 of what has been marked as Exhibit 77A, that there is very definitely an expression of opinion by the author as to what the witnesses attempted to show. Therefore, I think it is not factual and rather expression of opinion by an individual and we should, therefore, be able to cross-examine that individual that expressed those opinions.

EXAMINER HOLSTEIN: What I am going to do may be a little unorthodox. I think it is still true that Exhibit 77A, al-

though it does contain what appear to be expressions of opinion consists for the most part of an historical discussion as the title indicates of the development of licenses and the order regulating the handling of milk in the Greater Boston Marketing Area. The basic material, as Mr. Lee indicated from which Exhibit 77A came, is Exhibit 77B. Ordinarily, a document as old as Exhibit 77B, which is now some 26 years back, is not of much value in determining what are the present marketing conditions which might or might not justify a proposal –yes, gentlemen, will you please [3418] complete your objections so that I can go on with my statement. I lose my train of thought when I am interrupted.

MR. MAHONEY: I was waiting until all objections were complete before I responded to objection, I wanted to inquire whether you are now making a ruling?

EXAMINER HOLSTEIN: Yes, I am. I thought everybody had been heard that wanted to be. I certainly don't want tc deprive you of an opportunity to be heard, sir.

MR. GEYER: I wanted to be heard before you made a ruling.

MR. MAHONEY: I will defer to Mr. Geyer.

EXAMINER HOLSTEIN: No, you were up first.

MR. MAHONEY: Addressing myself to the question of Exhibit 77B, do I understand the wording of the Agricultural Adjustment Act, it speaks of the differentials customarily applied, I would assume that the word "customarily" is a word of art and design as used in the statute refers to custom and usage in the milk industry and under all of the definitions–

EXAMINER HOLSTEIN: So I can understand what you addressing yourself to, are you objecting or–

MR. MAHONEY: No, I am in favor of the admissibility.

EXAMINER HOLSTEIN: Now I know what to expect. Go ahead.

MR. MAHONEY: That all of the definitions I know of [3419] the word 'custom' whether they are legal or non-legal, speak about the usage over a considerable period of time. Now, Exhibit 77B, as I understand Mr. Lee's statement, is all of the testimony on this particular question of differentials. It was

under oath at that time by people whose minds were fresh. I would submit that it is the very best evidence of what the custom was prior to the inception of the order and that it should be considered at the same time because of the wording of the act.

EXAMINER HOLSTEIN: Thank you. Mr. Geyer.

MR. GEYER: Well, Mr. Hearing Master, my statement is somewhat along the line of the previous one that at the time that this testimony was taken in 77B, the Secretary did not issue a finding of fact other than a one sentence finding to comply with the act and so it seemed also that custom was different than in that I noticed the first witness under 77B, excerpts from the old record, was Mr. Aplin, who was an employee of the Department at that time and the Department was the proponent, I believe, of this part of it, so that it does seem to me that this should be given some weight in your ruling that Mr. Lee, as I see it, is attempting to put into this record for the consideration of the secretary, a complete history of how we got these differentials in the first place and how they became customary or customarily applied as they have since for this number of years.

[3420] EXAMINER HOLSTEIN: All right, sir. Mr. Tipton.

MR. TIPTON: I am sorry if I was confusing in my remarks earlier that I was through. Actually, I was addressing myself to 77A and I didn't realize that you were going to rule on them together. I do have some remarks with regard to 77B.

EXAMINER HOLSTEIN: Go right ahead.

MR. TIPTON: In the first place, 77B includes at the end, I think this is included, a brief rather than excerpts from the decision. As a matter of fact, I think there are two briefs. Another thing is, I understood the witness to have said that he has copied all of the items of this hearing record that were relative to nearby farm location differentials. However, I very distinctly remember having read from the Barnhart thesis a statement made by Dwight Bebe, who was then representing producers cooperative associations in the market, which I do not find his statement in the testimony that is included in what we have marked as 77B.

Therefore, I wonder if it really does include all of the statements relative to nearby farm location differentials that went into that hearing record.

EXAMINER HOLSTEIN: Do you know anything about that, Mr. Lee?

THE WITNESS: I don't know anything about that [3421] testimony you refer to. I didn't come across it in going through the entire hearing record myself. It is possible that I might have missed the statement that he made, but I went through the entire record log for all material on that subject.

MR. TIPTON: That statement was in opposition to nearby farm location differentials, too, I might add.

THE WITNESS: I didn't see it and omit it for that purpose and would just as soon prefer that it would be included in some way. I could even obtain it and add it as a supplement because of my intention that everything on the subject be in.

EXAMINER HOLSTEIN: Mr. Lee, the material appearing at the end of what has been marked Exhibit 77B is entitled "A brief regarding the Economic Advantage of the Dairy Production Adjunct to the Greater Boston Market," by a Mr. Bell, and what appears to be another brief or argument by the Nearby Milk Producers Association. Were both of those documents a part of the hearing record of the transcript as you read it?

THE WITNESS: They were bound with the hearing record, yes. Also, there is a two page government economic brief.

EXAMINER HOLSTEIN: The objections to these two exhibits, of course, are based upon proposition that [3422] expressions of opinion or even of fact must be subject to cross-examination and when they are introduced by way of a document by a person not present, there is, of course, no way in which the offer can be cross-examined in the event that someone doesn't agree with what he said. But keeping that principle in mind, these two documents, 77A and 77B are being offered for the purpose of showing, as I understand it, and correct me if I am wrong, or rather I wish you would affirmatively state if I am right, for the purpose of showing the history and background of farm location differentials rather than to indicate present economic and marketing conditions, is that correct?

THE WITNESS: That is correct.

EXAMINER HOLSTEIN: I think it is obvious that a document that is 26 years old and another one that is 15 or 16 years old could have very limited if any value in proving what our present economic and marketing conditions are with respect to any present proposal which is under consideration. However, for the purpose of showing the background and the history and how farm location differentials came into being, and the reason why they came into being in the first place, I believe that these two documents are admissible.

As I indicated previously, that determination is not entirely free from doubt, but a doubt as to admissibility in a proceeding of this kind must be resolved in favor of [3423] admitting the document. If I am wrong, the Secretary of Agriculture will overrule me and disregard both of these documents.

Now, in fairness to Mr Tipton's representation that as he remembers it, the hearing record in question contained something more on the question of location differentials which is now included in 77B, will you, Mr. Lee, take it upon yourself to examine that record again with specific references to the material described by Mr. Tipton and with his help, if necessary, locate the additional material and make it a part of 77B?

THE WITNESS: Yes, I would be glad to do it with him.

MR. APLIN: We have that hearing record in our office. I could have it sent up and Mr. Tipton or anyone else can examine it. There is an index of witnesses so that it would be easy to find on what pages Mr. Bebe presented testimony.

EXAMINER HOLSTEIN: I will leave it to Mr. Lee, then, to find or to take it upon himself to assure himself that absolutely everything that is in that hearing record which had anything to do with location differentials is included in what would be admitted here in Exhibit 77B. Will you do that, Mr. Lee?

THE WITNESS: I will.

[3424] MR. HALL: Inasmuch as Mr. Tipton is making particular reference to a witness with reference to that particular matter, that it should be his responsibility as well with the record.

EXAMINER HOLSTEIN: I am not going to put the finger on anyone.

MR. HALL: You put the finger on Mr. Lee and that is what I am objecting to.

EXAMINER HOLSTEIN: Because Mr. Lee and his offer is before us and Mr. Tipton's is not. Mr. Lee has also stated that Exhibit 77B contains everything on the question of farm location differentials. That was his honest opinion. Now, his attention has been called to the possibility that it may not, so I believe it is Mr. Lee's primary responsibility. He may have whatever help Mr. Tipton can give him.

MR. TIPTON: I will be happy to assist Mr. Lee.

EXAMINER HOLSTEIN: With that understanding, the objections are overruled, Exhibit 77A and 77B are received in evidence and become a part of the record.

(Exhibits 77A and 77B were received in evidence.)

* * *

The Witness: The first four pages of Exhibit 77B, pages 229-232 of the record, contain testimony by Mr. Aplin who was explaining the proposed new pricing plant which included farm location differentials in place of base ratings. On pages 231 and 232 Mr. Aplin said, concerning nearby and intermediate farm location differentials: "Paragraph 3 there provides that in the case of milk delivered by a producer whose farm is more than 40 miles but not more than 80 miles from the State House in Boston there should be added 18 cents per hundredweight, and paragraph 4 provides that in the case of milk from a producer whose farm is not located more than 40 miles from the State House there should be added 36 cents per hundredweight. These figures are only tentative. They are based on what information we now have as to the difference in the price received by the nearby producers over a period of years as compared to prices received by producers at country stations. We expect evidence to be introduced here today to show whether or not that is the proper differential; that is, whether 36

and 18 cents is a correct amount. The idea is, without regulation over a period of years, producers whose farms are near the market, due to the fact that their milk is accessible to small dealers, and their (3426) milk is rather even throughout the year, have been able to obtain a price greater than the country station price, and the difference is more than the difference between the freight and the country station charges. So that, if we set up a plan which did not give them the same advantage which they would have without regulation it would be unfair to them. On the other hand, if we gave them more than they had without regulation we would be giving it to them at the expense of other producers. It is the desire of the Administration to maintain the relative positions and to set that figure at a point which will do that."

Pages 5, 6, and 7 of Exhibit 77B—I might interject here that I have numbered my copy of the 26 pages consecutively—pages 266-268 of the record, record the testimony of Mr. Wesley H. Bronson of the NEMPA concerning the historical price relationship between nearby and Zone 20 prices and the proposed farm location differentials. Mr. Bronson said, see pages 266 and 267 of the hearing record: "Paragraph 4 of this same section calls for an additional location differential of 36 cents per hundredweight for milk from farms located inside the 40 mile zone. This additional differential is justified by nearness to the market and that in the past producers delivering to distributors at the market have received differentials in line with those proposed in this amended order.

(3427) "Over a four year period of time, 1927 through 1930, producers delivering to Deerfoot Farms averaged to receive $1.16 per hundredweight more for all milk delivered at Southboro than producers averaged in the 191-200 zone for all milk.

"Over a ten year period of time, 1923 through 1932, producers delivering to the J. B. Prescott Company at

Bedford, Mass., averaged to receive $1.04 per hundredweight more than producers averaged for the same period in the 191-200 mile zone for all milk.

"Now, the differential that is proposed in this order would work out 90 cents per hundredweight. I would like to file as exhibits four copies each of the milk comparisons for Deer Foot Farms with the more distant milk for the years 1927, 1928, 1929, and 1930, and for the J. B. Prescott Company. I have four copies here."

Pages 8 through 13 of Exhibit 77B, pages 200-265 of the record, record the discussion concerning farm location differentials by the late John L. Carten, with Mr. Aplin. Mr. Carten argued that the nearby differential should be "at least a cent a quart," and Mr. Aplin emphasized that the purpose of the differentials was to secure for nearby producers the same relative price position that they had before regulation. The following are quotations from Mr. Carten's testimony, pages 261-283 of the record: "Now, we feel that to be protected in our special place in the market (3428) requires two things. We must be protected against seasonal surplus. Our production is even and has always been regulated closely to the requirements of our distributors. Some of them asked distributors, will ask for more or less milk as they want it. In the second place, we must have somewhere near our differential—our consumer differential over the 200 mile zone, and get that much. Now, the methods of protecting us under the old license, we received the Class I price for all our rated milk, but our Associaton is very much opposed to ratings—Federal ratings, I might say. We had bad experience with Federal ratings. * * * We don't want Federal ratings. Under those circumstances, the fairest way would be to pay us on a 10 per cent surplus the year around. Under that, pay us the 90 per cent, Class I price, 10 per cent surplus price. * * * 90 cents is way below anything that Mr. Bronson produced and we have figures here from one of our producers from 1920 to 1930

for the price received for milk shipped to Salem, Massachusetts, to the H. P. Hood Company, and they averaged —it is hard to average them, but it was between—somewhere between $1.20 and $1.30 over the NEMPA price in the 191 mile zone. We should have at least a cent a quart over the equalized price to be protected.

"* * * The trouble with the 1 cent a quart and why we are so insistent on the cent a quart is that, unlike our proposed plan, which we feel is fair, the 10 per cent surplus (3429) the year around, we are at the mercy of a very low equalized price. We haven't any idea, and no one has been able to tell us, what surplus the market is going to carry * * * If we get a cent a quart over the equalized price and the equalized price is based on a 70 or 80 per cent surplus, we don't feel that we are getting any protection at all. We would be better off out of it either as producer-dealers or as some other way. And, another trouble with the one cent differential is that it does not protect us against seasonal surplus. Our production is even and in the past all the ten year figures that we have we received practically—nearly as much in the flush period in the spring as we receive in the other part of the year, and a price differential over an equalized price doesn't protect us in the flush season. We make less milk and get less for it. I think that if it was possible at all we asked for a payment on 10 per cent surplus throughout the year. If that is not possible, we will go along with the license, but we must have at least one cent a quart over the equalized price. I am not satisfied with that, and I don't think it will protect it, but I think probably we would go along with it. I don't think any less would be acceptable."

On pages 12 and 13 of Exhibit 77B, pages 284 and 285 of the record, Mr. Aplin is quoted as follows: "If this order were to go into effect the first of August, as amended, (3430) with a composite price, we can only make an estimate as to what the surplus would be in the

pool. If it should be 50 per cent, it doesn't seem it should be more than that in August, if there were a 50 per cent surplus and the cream market should not go up any between now and then, the composite price in the 200 mile zone would be about $2.04 a hundredweight and this 90 cents added would make $2.95 and that extra 90 cents would be 44 per cent more than the 200 mile zone price so that you would get the same relative position. You would be getting 44 per cent more than the fellow in the 200 mile zone. That is a lower price level now so that if you got $1.10 more added to the $2.50 then and you get $1.10 more with the $2.05 price, now, you would have a bigger advantage than you had then. You would be getting more than 44 per cent more. • • •

"I am just looking here, how, at the figures Mr. Bronson has as to the average price which, apparently averaged about $2.50 in those years. $1.10 more than that would be 44 per cent more. If this price should come out, $2.05, in the 200 mile zone, now, with a 50 per cent surplus you would then be getting 44 per cent more than they do up there. The relationship and percentage would be just the same. • • •

"The purpose is to get them the same relative position they had before."

On pages 14 to 17 of Exhibit 77B, pages 345-348 of (3431) the record, Mr. Aplin continued his description of the proposed new pricing plan. Touching on elimination of base ratings and farm location differentials, he said: "Paragraph F is at the top of page 4. It covers that page and a little bit on the next page. That proposed amendment revises and rewrites article 7 of the order. Article 7 of the order provided for a calculation of the market pool and also provided for the establishment of base ratings. The last four sections of the article were in regard to base ratings, and those four sections are proposed to be removed entirely so that the order, as amended, would contain no reference whatever to any base

rating plan. With that change in the method of paying producers, there was a necessity for changing somewhat the instructions to the Administrator for figuring the market pool. * * * Then, in paragraph 2 he adds to that sum of money the net amount of the differentials which are provided for in section 4 of article 8, those are differentials for freight and differentials for nearby producers which we will discuss when we came to that article. It is necessary to take those into account in figuring the pool so that there will be a sum of money available with which to pay those differentials and so that the pool will balance."

On pages 18 and 19 of Exhibit 77B, pages 355 and 356 of the record, Mr. Aplin discussed the amount and basis of the proposed farm location differentials as follows: (3432) "Paragraphs 3 and 4 of that Section provide for differentials according to the location of the producer's farm. Paragraph 3 provides that in the case of milk delivered by a producer whose farm is located more than 40 miles but not more than 80 miles from the State House in Boston, there shall be added 18 cents per hundredweight. Paragraph 4 provides that in the case of milk delivered by a producer whose farm is located not more than 40 miles from the State House in Boston there shall be added 36 cents per hundredweight. These two differentials of 18 cents and 36 cents are paid to the producer on account of the location of his farm near the market, and the exact amount of these differentials as set up here is tentative.

"We received considerable evidence at Boston yesterday as to the average price which had been received over a period of years by producers near the market as compared with the average price received by producers who delivered to plants 200 miles from the market. The intention was to set up these differentials at such an amount as would allow producers near the market to maintain the same relative position compared with producers distant

from the market that they have held over a period of years without any government regulation. If it is shown, as it has been, that producers whose farms are near the market have received without regulation consistently over a period of 10 years or longer a difference (3433) in price which cannot be entirely accounted for by the freight rate or the country station allowance, we would be placing those producers in a relatively poorer position as compared with distant producers if we set up a plea which did not give them the same relative price. On the other hand, if we should give them a differential so large as to put them in a relatively better position then they had been without government regulation, it would be unsatisfactory because that extra price could be paid to them only at the expense of other producers. So, the intent was to keep them in a relative position and to give them a differential which will enable them to do that."

As we have seen, the object of the differentials was, as Mr. Aplin said, to keep the nearby producers' price in the same relative position as it had been in prior to Federal regulation. As times have changed and as inflation has occurred the nearby and intermediate differentials have remained unchanged. And we urge continuation, under any circumstances of consolidation or separate orders, of the existing farm location differentials, even though a case might be conceived for raising them. If the nearby price were set today at 144 per cent of the Zone 21 price, it would be, say, 144 per cent of the 1962 average price of $4.42, or $6.36 a hundredweight. This would require a nearby farm location differential of $1.40, assuming the present city plant (3434) differential of 54 cents.

Pages 20 and 21 of Exhibit 77B are photocopies of pages 93 and 94 of the Economic Brief in the record concerning nearby differentials. USDA reported on a study of seasonality of production and the farm location differential plan which would accomplish the purpose for

which the rating plan in Order No. 4 was intended. The Department had this to say in the Economic Brief: "A study of the comparison of returns to different types of producers under the proposed plan and those under the rating plan effective in Order No. 4 reveals that the two are perhaps not radically different. In the study, a sample of approximately 15 per cent of the producers in the market was taken. These producers were classified as even or uneven. Even producers were defined as all those producers whose deliveries in the quarter of the year in which their daily deliveries were lowest were at least 70 per cent of their deliveries in their highest quarter.

"It was found that only around one-fifth of the producers in the market could be called even under this definition. These even producers were scattered throughout the milkshed so that, for the most part, their evenness was completely offset by the irregularity of their neighbors. (See Table 38.)" That was in the record, not my table. "Only in the nearby zones was there a preponderance of even producers so that, as a group, they showed even deliveries. Nearly (3435) two-thirds of the producers located within 40 miles of the market were classified as even. The average of their low-quarter deliveries as a group was over 70 per cent of their high-quarter deliveries. Over 50 per cent of the producers located between 40 and 80 miles were classified as even, and they, as a group, had an average of nearly 70 per cent. No other zone group had an average of 62 per cent. It is proposed that these two groups of producers—that is, those located within 40 miles of Boston and those located between 40 and 80 miles—be given location differentials of $.35 and $.18 per hundredweight, respectively.

"Even without consideration of these special differentials the study indicated that even producers under a pool without rating would receive an annual average price of about $.025 per hundredweight higher than the

average producer, whereas in a pool with rating—as existed in Order No. 4—the even producers would receive only $.11 per hundredweight higher. The higher price received by even producers under the pool without ratings arises because they deliver relatively less milk in those months when the composite price in the market is low.

"It is thought that the proposed plan, which gives consideration to these producers located nearby the market who are preponderently even and who as a group have very uniform deliveries, and which returns a price higher than the (3436) average to the other even producers, accomplishes the purpose for which the rating plan in Order No. 4 was intended."

Milk production by nearby producers still is more even (less seasonal) than production by "distant" producers. Most of the distant producers are in the Boston Market. For a quick check on the difference in seasonality of production by the two groups of producers, the monthly receipts in 1962 by distant producers in the Boston market and by nearby producers in the five markets combined, I have expressed their daily average for each month as a percentage of the daily averages for 1962. The analysis is presented in Table 7 of this exhibit. It shows that production by the nearby producers in November was 92 per cent of May-June production, while that for the distant producers in November was 79 per cent of May-June.

Turning again to the photocopies from the hearing record made in June-July 1937 on pages 22 and 23 of Exhibit 77B, is the two-page brief by Ellsworth W. Bell, Extension Economist, Massachusetts State College, entitled, "A Brief Regarding the Economic Advantage of the Dairy Production Adjunct to the Greater Boston Market." In his brief Professor Bell said: "A four year average of the years 1929-1932 shows that 87.6 per cent of the milk produced in Massachusetts was sold as market milk. About

20 per cent of this market milk was sold at retail or, in other words, from (3437) farm direct to the consumer and about 80 per cent was sold at wholesale to handlers in the markets who in turn distributed to consumers. Massachusetts milk production is sold in all markets of the state, the principal being the 'secondary markets'. However, about 15 per cent of the milk used in the Greater Boston market is supplied by Massachusetts dairymen

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"From data published by the Bureau of Agricultural Economics in 'Milk Production Trends' in 1932 the average price per 100 pounds of milk sold by dairy farmers in Massachusetts was $2.81 compared with $1.55 per 100 pounds in Vermont or a differential of $1.26 per 100 pounds.

"Assuming a distance of 200 miles from Boston as average for the Vermont production 36 cents freight plus 23 cents station charge plus 3 cents can charge would give amount equal to 62 cents as tangible differentials accruing to the economic advantage of the nearby dairymen in Massachusetts due to location. The difference indicates however an additional amount of 64 cents. (62 cents plus 64 cents equals $1.26) This 64 cents per 100 pounds is less tangible but nevertheless exists due to peculiar advantages existing for disposal and sale of the milk at the higher market price.

"Therefore, it is recognized that freight, country assembling expenses, container services, refrigeration and other charges are not required to the same degree with respect to milk produced nearby for fluid sale. In addition, it is (3438) recognized by sellers more remote from market that sellers near to market must receive an additional amount commensurate with their current opportunities of sales which are natural and economic to their location. This is particularly necessary when a definite plan is established to provide a means whereby the various groups in the milkshed will cooperate on an

orderly plan to share the fluid sales of the market at a fair price.

"Evidence is apparent that the majority of sellers are desirous of adopting such an orderly procedure through a regulated plan of equalizing the sales use of milk among the various shippers. It is further recognized by the majority of sellers that adequate location differentials must be allowed to those sellers near to markets thereby making it unnecessary for any group to cut their offering price in order to obtain its share of the market proceeds of fluid sales.

"It is therefore necessary in the efforts to establish a workable plan designed to stabilize market conditions in the Boston area that the dairy industry in the near to market area be provided for in its true and natural location advantages. If these advantages now enjoyed are duly considered and fairly provided for the proposed plan has a better than reasonable chance of succeeding in its intended purpose."

Pages 24-26 of Exhibit 773 are a photocopy of the (3439) brief by the late John L. Garten, Jr., representing Near By Milk Producers Association. The following quotations can be found in Mr. Garten's brief: "I—Mr. Aplin observed at the hearing that 35 cents is a differential of 44 per cent over the composite price expected in the 200 mile zone under the new License which is the same percentage shown by Mr. Bronson's ten year average differential from 1922 to 1932. If 44 per cent of the 200 mile price is the fair differential for local producers then whenever the composite price changes the 35 cents per hundredweight will become unfair and our producers will swarm to the office of the Market Administrator to remind him of it and to demand an adjustment. It will greatly facilitate the administration of the License to give the near by producers the flat 45 cents they insist on and let that amount ride unchanged with any composite price.

"II—The 46 cent per cwt, or one dollar differential over the 200 mile zone which our association asks is less then either of Mr. Bronson's figures, $1.16 for Beerfoot producers, and $1.04 for Prescott producers. If Mr. Bronson had taken a 10 year average from 1920 to 1930 the differential would have been even more, between $1.20 and $1.30 per cwt * * * It is unfair to local producers to start a 10 year average with 1922.

"III—The five directors of the Near By Milk Producers Association represent a fair cross-section of Essex and (3440) Middlesex County dairymen. It may interest the AAA to know that when they met to discuss the License, two directors were in favor of the License, two were opposed, and one was undecided. After a long discussion they reached a unanimous decision on two points. All five directors agreed to support the License if the 40 mile producers received at least 46 cent differential. And all five agreed to oppose the license with every means in their power if 40 mile producers received less than a 46 cent differential. It is the hope of our association that the License to be voted on will either pay 40 mile producers on a 10 per cent surplus the year around, or pay a flat 46 cent differential. If it does either we can promise the support of our members to the License and the support of the many Essex and Middlesex County producers outside our association who listen to our opinion with respect."

In the early days of the Boston Order, some concern was expressed that the farm location differentials might serve to stimulate production in the nearby and relatively high-cost areas. Twenty-five years ago, the 46 cent differential represented about 25 per cent of the basic blended price. In 1961, it represented slightly over 10 per cent of the basic blended price. Table 8 of this Exhibit shows the trends in the number of Boston producers with farms located in the nearby differential areas, in the proportion of producers, and in the total pooled milk received from such areas.

(3441) Over the years there were two major expansions of the Greater Boston marketing area as well as a few minor ones, which brought in additional nearby producers as well as additional Class I sales. The major expansions occurred with the combination of the Merrimack Valley and the Greater Boston marketing areas, effective July 1, 1959, and again when 26 cities and towns were added to the Greater Boston marketing area, effective September 1, 1960. In these instances, I have shown figures for the month immediately before, and the month after, expansion of the marketing area. The figures pretty well speak for themselves. They indicate a steady and continuous decline in the number and proportion of producers with farms located in the nearby differential areas, and in the proportion of total pooled milk received from these areas, except as interrupted by expansions of the marketing area. They do not indicate that nearby producers have been "over-paid" for their milk, or that they have been encouraged to increase production. The slight upturn between September 1961 and September 1962, in the proportion of producers and proportion of total pooled milk received from farms located in the nearby differential areas does not indicate an increase in production in those areas. It reflects primarily the producers whose milk was formerly received at the Hood plant at Manchester, New Hampshire, but who were displaced from their local market and transferred to Hood's Boston (3442) plant, effective July 1, 1962.

From the base rating times before and after the advent of Federal regulation to the present, producers' money and producers' money along, has been involved in the (illegible) of returns to nearby and distant producers.

Our Association is strongly opposed to removal of farm location differentials in New England Federal order markets, and urges that they be continued at existing rates.

• • •

[3981] [By Mr. Tipton]

Q. No, sir, it is not in that connection. You did testify to the effect that nearby producers because they had more evenness are compensated, nearby farm location differential. However, I am asking you in relation to producers up country which had even production also, should they not be compensated on the same basis then? A. They should be if the order is providing a base rating plan, which they do not.

Q. Well, by providing for a nearby farm location differential then, you would not compensate up country [3982] producers that had just as even production as those producers in the nearby area, is that correct? A. No.

Q. No, is that not correct? A. That is correct.

Q. You also made a statement that the higher prices have been calculated into the land values. Do you contend that this constitutes a reason as to perpetuation of the nearby farm location differentials? A. Yes, it is one of the justifications for nearby differentials.

Q. Then you think it is the purpose of the nearby farm location differentials to perpetuate the value of the land in the nearby area? A. That is a farm value, I didn't say land.

Q. Well, we will include farm values then. A. I believe that that is one of the bases for that that warrants continuation of the price structure which we have had for many years, yes.

Q. Does the farm values in these nearby areas, make up some of the basis of the cost of production in the nearby area? A. Farm values are an element of the cost of production, yes, and then nearby as well as all other areas.

Q. Then do you contend that the cost of production [3983] is higher in the nearby areas? A. I didn't testify as to what costs were on farms in the different areas.

Q. I know, but you have stated here that they have higher land values and you have developed now that is a part of the cost of production in nearby areas. Then is this part of the justification for the nearby farm location differentials that well, that they do have the higher cost of producton? A. That reason has not been given by me as a justification for the nearby differentials.

Q. Then you don't think it is justification for nearby farm locations differentials? A. I want to give the matter more thought.

Q. Does that mean you will give an answer to that later? A. Not necessarily.

Q. Would you give an answer to that later?

MR. CHERNAUSKAS: He said not necessarily.

MR. TIPTON: I know. I ask him if that meant that. Now I am asking if he would.

THE WITNESS: I will give it further consideration, yes. Whether I will be able to testify on it, I am not sure.

By Mr. Tipton:

Q. Later on you will make this statement apparently [3984] they are acceptable if they apply to a relatively small proportion of the milk but otherwise they constitute an unwarranted burden on the pool. Apparently they are acceptable to whom, to you or to—

That is, in the fourth paragraph on the first page, the second sentence. A. No, I was thinking of any opponents of the nearby farm location differentials. I was thinking of apparently the acceptable to opponents of farm location differentials, some people who might then opposed to them, otherwise.

Q. Well, you were not referring to the CDS? A. I didn't have CDS, no.

Q. Just in general? A. Yes.

Q. Then in the last paragraph on the first page you make the statement that "such disparities were swept under the rug in a complete consolidation of the orders."

What do you mean by "swept under the rug"? A. Simply that if there were a consolidated market order there would be no individual market prices to consider having disparities.

Q. In the second to the last paragraph of the fourth page you make a statement concerning the reduced prices concerning the amount that prices would be reduced to various producers and the amount that would be increased [3985-3986] in various producers. Were you talking about a specific period or was this an average or what was the concept here and to

what producers were you referring to? A. In the next to the last paragraph on page 4, did you say?

Q. Yes, sir. A. I was referring there to the analysis in table 5, the bottom section of the table which shows those prices, those price differences.

Q. I see. That was for 1962? A. 1962.

Q. I see. So when you are talking about though, for example, that to reduce the price about 26 cents to nearby producers, that would vary, would it not between various markets as to how much the price would actually be reduced in nearby producers. A. I think you are talking about the five market comparison there.

Q. Yes, I am. For example, you say that in the five market consolidations the affect of eliminating farm location differentials would have been to reduce prices about 26 cents to nearby producers. I think I am now beginning to understand the paragraph. You are talking about comparing the five market consolidation with nearby differentials and without? [3987] A. Yes.

Q. I am sorry, I did misinterpret the paragraph.

In the last paragraph of page 5 you make the statement that "if farm location differentials were not kept in the consolidated market, the New England zone 21 blend price would have been about $4.67.9 cents, which is 44.8 cents above the New York-New Jersey price."

Now my question is, you contend that this 44.8 cents per hundredweight is the difference between the New York-New Jersey price would be a substantial difference and might create shifts of milk between the two markets, is that correct? A. I made the statement of what the difference would have been and now you are asking me what?

Q. Well, if this difference might cause milk to shift between the two markets? A. The difference would be approximately twice as great as it was in 1962 actually and this very well might lead to shifts of supplies.

Q. But isn't that difference somewhat behind even when you have here nearby farm differentials because what you are in effect doing is perpetuating the nearby area that is higher

than they would receive under a more competitive type pricing. Is that true? A. I am not concealing anything. It is a fact that the price in the zone 21 without farm location differentials [3988] would have been higher and by that amount.

Q. All right. Let me ask it another way.

Are you familiar with the amount that the Connecticut market takes out per hundredweight in order to obtain an aggregate amount of money to pay nearby farm location differentials? A. Yes. And the values and rates are set forth in table 2.

Q. In Table 2 it is shown for all producers as 45 cents, is that correct, for the period of 1962? A. Yes.

Q. And the differential is 46 cents, is that correct? A. The value per hundredweight of all of the differentials in Connecticut was 45 cents. The rate to the nearby producer was 46 cents.

Q. The rate that they received was 46 cents? A. Yes.

Q. And the amount that was deducted from all the milk in the pool was 45 cents. If the nearby farm location differentials were deleted from the Connecticut market, there would be a net loss of approximately one cent, is that correct? A. Yes.

Q. So what advantage does the nearby farm location differential give to the nearby producers other than a one [3989] cent gain in their price, anything? A. I didn't mean to imply there was any substantial advantage in that regard.

Q. Well, is there any substantial advantage in that regard? A. I said no.

Q. Oh, there is no substantial advantage? So the Connecticut nearby farm location differentials could be removed? A. No.

Q. And there would not be a substantial change in the prices that the Connecticut producers would receive, is that correct? A. A substantial change to nearby Connecticut producers?

Q. Yes. A. That is correct.

Q. If there would not be a change we recognize that there would be a one cent change approximately. If this would be

the only change, why would you, or would you have an objection to the deletion of the nearby farm location differentials in the Connecticut market? A. I would be in favor of keeping the differential in the Connecticut market on the basis of principal as in all of the other markets. There happen to be more [3990] nearby producers in Connecticut which affects the rate substantially but the principal would remain the same whether it is a Connecticut market or a Boston market that we are talking about.

Q. Just so we understand, the deletion of the nearby farm location differential would not affect the Connecticut price to nearby producers of a very substantial amount, and by that I mean one or two or three or four cents, something like this? A. The rate makes that obvious.

Q. Continuing that line just a moment then, would you anticipate that if the nearby farm location differential was removed, that there would be an increase of supplies in milk into the Connecticut market? A. No.

Q. On page 9 of your statement in quoting that excerpt from Exhibit 77B you make the statement that "over a four year period of time, 1927 through 1930, producers delivering to Vermont farms averaged to receive $1.16 per hundredweight for all milk delivered at Southboro that producers, averaged in the 191-200 mile zone for all milk."

Updating that figure from 1927 to 1930 to say 1960 through 1962, and assuming that we did not have federal regulations, what would you think that the difference might be? I am not talking about the actual prices but the [3991] difference between the actual prices? A. I would not want to speculate on what that might be, Mr. Tipton. It involves the utilization of the milk of the nearby distributors and I don't think—I don't know if you assume conditions of federal regulations or not, but that would be important, too.

Q. No, I said without federal regulations? A. Without federal regulations. It is conceivable that the utilization of the nearby milk would bring about such prices in excess of the 21st zone price plus handling and freight, yes.

Q. Do you think it would? You said you think it was conceivable. Do you think it would? A. Certainly if the preponderance of the receipts were by small dealers having small percentages of class I, I do.

Q. Well, tell me—then I will ask the question maybe a little more specifically. How much more do you think the Hood Company would pay for milk from producers in the nearby area as compared to milk from producers in the 21st zone? A. I don't know.

Q. Would they pay any, do you think? A. I would not want to attempt to answer. I think that they might, yes.

[3992] Q. If they might it would be a very small amount do you think? A. I think the present farm location differential is relatively small.

Q. But you have testified, not you, your organization, or a representative of your organization has testified that because of the transportation differentials being slightly too high that there is dropping of nearby producers, is that correct? A. Yes.

Q. And that is because apparently the handlers are not willing to pay the additional amount for the nearby milk as compared to what they would pay for and receive in the upcountry milk and delivery, is that correct? A. It was not and still is not a question of whether they would pay in the form of class prices, higher prices. The advantage of the nearby differential was before regulation and conceivably could be again one of the utilization and the kind of plan which might be in effect in the market such as the base rating plan which would be designed for the purpose of establishing equitable returns to different groups of producers.

Q. Well, before federal regulations why did the handlers pay 46 cents per hundredweight for nearby milk as compared to upcountry milk after adjusting for cost of transport? [3993] A. I was not in the market at that time. The nearby producers did receive according to a price series that were determined for a period of years before regulation blended prices which were higher than the NEMPA price in the zone 21 by the amounts given, and they might possibly, if the

whole truth could have been known by statistics at the time, might be even larger differential.

Q. Well, do you think that the handlers paid this because this milk had some additional value to them as compared with upcountry milk, or was there some other reason? A. I have already explained why the producer received the higher prices on account of supplying handlers who did have a large share of the fluid milk market at that time.

Q. Was it because the milk from the nearby area had more value to them? A. I didn't say that.

Q. I am asking you. A. I don't wish to get into controversial milk quality or things of that kind.

Q. If the milk didn't have additional value to them then why would not a handler go to an alternative source and buy the milk? A. Some did. I don't know. I merely say the facts are that the nearby producers were determined by [3994] survey to have received those higher prices.

Q. But you don't know why? A. I offered the possible explanation, yes, that they were supplying handlers who had a larger share of the milk market.

Q. Could you think of a reason why the handler, if he were to determine that additional or another supply of milk, an alternative supply of milk, had the same value to him delivered at his plant would pay for—would pay more for nearby milk?

MR. MAHONEY: I will object on the grounds this is extremely repetitious.

EXAMINER HOLSTEIN: Well—

THE WITNESS: Milk was being paid for on an over classified basis.

EXAMINER HOLSTEIN: Objection overruled.

THE WITNESS: Milk was being paid for on an over classified basis at that time. To the extent that the prices in that period could be analyzed the nearby producers were receiving from the handlers who received their milk prices which were higher than those to the upcountry producers by an amount which exceeded the great cost of the handling charge.

MR. TIPTON: Yes, but my question didn't refer to that. As a matter of fact I would like to have the [3995] question read back if I may.

EXAMINER HOLSTEIN: Read the question.

(The question referred to was read by the reporter.)

THE WITNESS: I am not saying he paid more for fluid milk. You mean in the way of class price he would pay a higher class price?

By Mr. Tipton:

Q. No, I am not referring to he or any specific time, I just asked a question involving alternative sources and alternative costs. I was not referring to a period of time or a specific handler in the question. A. They could have been identical prices on a classified basis, I don't know. I am not saying that because I didn't inquire into the background underlying the blended price series which were determined for those years.

Q. If a handler had milk delivered to his plant, in the city and part of that milk came from producers in the nearby area and part of that milk came from more distant sources, would that handler be inclined to pay more for the upcountry milk than he paid for the nearby milk that was delivered to his plant? A. I don't think you meant what you said in your question.

EXAMINER HOLSTEIN: Read the question.

(The question referred to was read by the reporter.)

[3996] MR. WHITNEY: I am talking about both of them f.o.b. the plant.

Is that f.o.b. the city plant in both cases?

MR. TIPTON: Yes.

THE WITNESS: He paid the city plant blended price for all the milk if that answers your question.

MR. TIPTON: May I have the answer read?

EXAMINER HOLSTEIN: Read the answer.

(The answer referred to was read by the reporter.)

MR. TIPTON: No, sir, that does not answer the question.

EXAMINER HOLSTEIN: Can you rephrase it again?

Did you understand the question?

THE WITNESS: Not thoroughly.

EXAMINER HOLSTEIN: Mr. Lee said he didn't understand the question so there is no use trying to get an answer to this question. He does not understand it.

Say you don't understand it if you don't.

MR. TIPTON: I really can't think of a way of saying it much more explicitly than what I have.

Maybe just for clarification if I make a couple comments on his answer, the handler would return the blend price to the producer but I was talking about the price the handler paid to the producer.

EXAMINER HOLSTEIN: To whom?

MR. TIPTON: Under federal regulations. He pays [3997] a class I price for it in other words. We will start from that point.

By Mr. Tipton:

Q. The question is, will he pay more for the milk from nearby producers delivered directly to his plant as compared to milk from up country sources that are delivered directly to his plant?

MR. MAHONEY: I would like some clarification. I don't know whether he means this question be directed to a handler who has no idea where the milk is coming from or whether the handler in fact knows whether it is nearby milk or upcountry milk.

MR TIPTON: Let's assume the handler knows his–knows it is the nearby milk and up country milk and exactly the same quality.

THE WITNESS: Under the hypothetical circumstances that you have drawn, I think the answer is you pay the blended price for all the milk, which included that from nearby as well as the up country milk.

By Mr. Tipton:

Q. That is all the handler would pay, is the blended price for that milk, he would not pay the Class I milk if he was under Federal regulations? What would the handler pay for that milk? Would he pay more? The handler does not pay the blend price for the milk. The cost to the [3998] handler is what he has to pay. That might be the Class I price. The only thing I was asking for was the difference between the two. A. I don't know what the handler would have paid. The handler today and then would pay the established class prices.

Q. No more, no less? A. I think you are trying to–

Q. I will ask the question again in another sense and see if we can get the answer.

Assume for the moment if you will that there is not a federal regulation in effect and that there is not a state regulation in effect, it is completely free. The handler located in Boston has received milk from producers that are within forty miles of the State House in Boston. He has also received milk from producers that are 200 miles from Boston. He has this milk now in his plant in the city. Is it exactly the same quality, he knows what portions of the milk came from the nearby or from the producers of within forty miles and he knows what milk came from the up country sources and where it came from. Will he pay any difference for these two volumes of milk?

MR. HALL: I think that question is objectionable on the grounds that it calls for a great deal of speculation. Maybe Mr. Lee can speculate on all these hypothetical [3999] questions that Mr. Tipton has included in his question.

EXAMINER HOLSTEIN: No, I think that is a fair question, Mr. Hall. Mr. Tipton wants to know why a handler should pay more for milk which comes from forty miles from his plant than he does for milk which comes 200 miles from his plant, all other things being equal–

THE WITNESS: It is conceivable that the handler had an arrangement with the cooperative association which we will assume the nearby producer belonged to and that in the absence of federal regulations would pay more than he might be able to procure fluid milk of the same quality from some up country supplier that might wish to supply the milk at a discount.

By Mr. Tipton:

Q. Now assume that we are at the end of the period of this contract or the agreement with the producer and association and that is it is time to renegotiate this. Would your answer be the same, that he would renegotiate the price possibly higher? A. I don't know. I don't know whether he would or not.

Q. In Table II, that is in this exhibit you show some computations relating to the value of farm location differentials in 1962. In this table under Worcester you show that producers in the nearby area contribute toward the nearby farm location differential amount of 34 cents [4000] per hundredweight. However if your proposal were adopted that the three markets of Boston, Worcester and Springfield were adopted, that the contributions of the nearby producers under Worcester would decrease from 34 cents to 9 cents, is that correct? A. I have stated the amount in my testimony but-

EXAMINER HOLSTEIN: That is what is shown on here.

MR. TIPTON: That is not necessary.

By Mr. Tipton:

Q. Then this would have the effect of causing up country producers under the Boston market to pay an increased proportion of the nearby farm location differentials, is that correct? A. Yes, it would.

Q. Do you represent producers in the up country area? A. Yes.

Q. Do you represent producers in the nearby area? A. Yes.

Q. About what proportion in each of the areas? A. I don't know.

Q. Do you have any idea? A. No.

Q. On page 14 in the first full paragraph which is an excerpt from Exhibit 77B there are stated several reasons as to why the differential of 46 cents was apparently [4001] justified or paid or what have you prior to federal regulations. Could you identify now what items of those, if any, would cause a differential to be paid under present conditions without federal regulations? A. I think the point of Professor Bell in his second sentence went on to say, "In addition it is recognized by sellers more remote from the market that sellers near to market must received an additional amount commensurate with their current opportunities of sales which are naturally economic to their location."

Q. Well, I had specific reference to the first sentence and the items listed in the first sentence. A. I think we will concede that those are similar. I will agree that they are similar.

Q. That those are similar to what? A. You asked me to name any one of those factors which today would be a factor for a difference which is in excess of them and I say not one of them. It is the second sentence which contains the germ of Professor Bell's thought in that paragraph.

Q. So none of the items in the first sentence would constitute a reason for justification of the 46 cent differential, is that what you are saying?

EXAMINER HOLSTEIN: I think he said it once, Mr. Lee, didn't you?

[4002] THE WITNESS: Yes.

MR. TIPTON: I didn't understand he had said it. He said similar and I didn't follow what he meant by similar.

THE WITNESS: I would not want to speculate on exactly what he had in mind on other charges but–

EXAMINER HOLSTEIN: No, that is not Mr. Tipton's question. Mr. Tipton's question is which one of these items in the first sentence, first full paragraph on page 14, would have a reason for justification today for the differential.

THE WITNESS: I have answered that. The justification for a location differential today is the same as it was–turning to nearby producers, would exceed these–

EXAMINER HOLSTEIN: Mr. Tipton is entitled to an answer to that question. Which ones of those items, they are specifically set down here–one, freight, two company assembling container services, three, refrigeration and so forth–are any of those valid today?

Is that what you meant?

MR. TIPTON: Are any one of those a reason for justification of the 46 cent transportation differential?

THE WITNESS: No.

EXAMINER HOLSTEIN: That question is answered, we can move on.

MR. TIPTON: I think that completes my cross examination.

[4003] EXAMINER HOLSTEIN: Mr. Whitney?

By Mr. Whitney:

Q. In order to clarify the record a little bit, in response to Mr. Tipton's question with regard to Table II I believe, and

he used the example of Connecticut and the point was made that location differentials resulted in maybe an extra cent for nearby producers, and I think he also asked the question that if location differentials were thrown out, or words to that effect, would you expect a change in the volume of milk available from country stores, country sources or something to that effect. Now my question would be if location differentials are eliminated in Connecticut for example, would not the 21st zone price, if milk was purchased in that area, be substantially higher under the Connecticut order? A. Yes.

Q. And that price would tend to attract more milk from those sources? A. That is correct. At the time I was thinking about the nearby differential being extended to those producers in the area that you have in mind.

* * *

[4006] By Mr. Sykes:

Q. Is it the general purport of your testimony as set forth in Exhibit 77 that prior to the inception of federal regulations there was a higher price paid to the nearby producer? A. Yes.

Q. Did you find any evidence to the effect that any computations were done in terms of which arrived at a certain basic price to which these people added a certain figure in order to arrive at a nearby price? A. No.

Q. Is it then your contention that the handlers never in fact did pay any higher price in terms of a specific differential? A. That is right.

* * *

Testimony of E. L. Tipton

E. L. TIPTON was called as a witness and, having been previously duly sworn, resumed the stand and testified further as follows, direct testimony.

Examiner Holstein: Mr. Tipton has handed me a document consisting of 19 pages of written testimony, plus several tabulations. The text matter will probably be referred to in cross examination, and the tables, of course, will not be read into the record, I presume.

You merely wish them to be included as exhibits; is that correct?

The Witness: Yes, sir.

Examiner Holstein: The entire document, including the text and the tabulations, will be identified, marked for identification as Exhibit 55.

(2126) (Exhibit No. 55 was marked for identification.)

Examiner Holstein: Go ahead, Mr. Tipton.

The Witness: I might add, in the identification of it, that there are 19 numbered pages, and there are some of them that are 8a and 19a, so there are a few more pages than 19, actually.

This statement is given in support of Proposal No. 52, as contained in the Notice of Hearing, except that our position is that the farm location differentials should be eliminated irrespective of the proposal to merge the Orders.

Farm location differentials have been a subject of much discussion since their inception in the New England Federal Orders.

The farm location provisions of the New England Orders are simple from a mechanical standpoint. The money to pay the nearby and intermediate producers the rates specified is deducted from the total value of all the milk classified prior to the computation of the uniform price. But while this is simple from a mechanical standpoint, it introduces two inequities that are inconsistent with the Order program:

(1) It transfers money from upcountry producers to producers located closer to the marketing area.

(2) It establishes artificially low values (or prices) for milk at upcountry points, and this serves as an (2127) effective deterrent to the entrance of milk supplies which otherwise might compete for outlets in the marketing area.

The Agricultural Marketing Agreement Act of 1937 provides for "individual handler pools" or "marketwide

pools", under Section 608c (5)(B)(i) and (ii). These sections provide and specify uniformity of prices to producers as determined by either of the two methods.

The rest of Section 608c(5)(B) provides for adjustments of the uniformity of prices, as determined by either method, in accordance with any of the following provisions:

(a) volume, market, and production differentials customarily applied by the handlers subject to each Order;

(b) the grade and quality of the milk delivered;

(c) the locations at which delivery of such milk is made, and;

(d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time.

Authority under the Act for nearby differentials could conceivably fall under (a) or (b). Under (a) the prices to producers may be adjusted for volume, market and production differentials customarily applied by the handlers subject to such (2128) order. If handlers customarily applied plus differentials for milk from nearby producers, this section of the Act authorized the retention of these differentials in the Order provisions.

However, there is no mention that if the handlers customarily paid these differentials the cost could be transferred from them to producers through a pool adjustment. I must emphasize again that the section explicitly states "customarily applied by handlers". Under (b) the Act authorizes adjustment for the grade and quality of milk delivered. Although it is conceivable that in 1937 the quality of milk from nearby producers may have been generally better than more distant supplies, the Secretary did not mention this item in the decisions

instituting the nearby differential provisions in the Southeastern New England and Connecticut Orders, and certainly it cannot be stated that there is any difference in quality under present marketing conditions.

We support the premise that handlers should pay for milk according to its value. If milk from nearby areas has additional value, the user of that milk should pay for the additional value of such milk, and that value should be returned to the producer who supplied that milk.

Producers near the market do receive compensation for their location. The price received for milk delivered directly to a city plant is higher than the price for milk delivered to a country plant in the 21st Zone by:

(2129) (1) the cost of transporting the milk from the 21st Zone to the city plant; and,

(2) an additional premium in an amount equal to the additional upcountry receiving and transferring cost as provided in Section 1001.42 of the Boston Order.

We are not proposing to eliminate these location advantages to nearby producers supplying city plants.

The Act does not specify that differentials customarily applied by handlers be continued indefinitely. The present rates were established in 1937 for the Boston Order and were incorporated in the New England Orders at the inception of each of the Orders at the same rates of 46 and 23 cents per hundredweight. The Secretary is now faced with the task of determining whether a differential price would be received by producers in the farm location differential areas had not the Federal Order provisions perpetuated the payments, through pool adjustments.

I. Basis for inclusion as contained in the decision applicable to the Southeastern New England and Connecticut Orders

The following are excerpts from the Decision dated October 21, 1958 (23FRS225) Docket No. AO-302 relating to the Southeastern New England marketing area states:

"Historically, dairy farmers in the States of Massachusetts, Rhode Island, and Connecticut, because of their location with reference to the large population (2130) concentrations of New England have disposed of a substantially larger percentage of their production for fluid uses than have dairy farmers in the upcountry area. Hence, nearby producers have been able to realize a price higher in relation to more distant producers than can be accounted for by the advantage in the cost of transportation to market.

"Under the marketwide pooling herein proposed the nearby producer, notwithstanding, would be paid on the basis of the average utilization of all milk in the milkshed rather than according to the utilization of his milk. Under a regulated market, however, he obtains the benefit of an established Class I price which may be higher than in the absence of regulation and has assurance that his milk will not be displaced by cheap, unregulated milk from more distant sources. The distant producer also benefits from an established Class I price, and by the fact that he gains a larger share of the fluid market than is likely without marketwide equalization.

"The use of a nearby differential will return to nearby producers a somewhat greater share of the Class I price than they would otherwise obtain through marketwide pooling. Moreover, such a differential will tend to provide returns to both nearby and upcountry producers more nearly in line with their prospective returns without (2131) marketwide equalization.

"The scheme of nearby farm location differentials and the amount thereof is identical with that employed in adjacent Federal Order markets. The differential as herein proposed will provide for equitable distribution of pool proceeds among all producers and will promote orderly and stable marketing in the entire New England area. The adoption of nearby farm location differentials was proposed and generally supported by interested parties at the hearing."

The decision relating to the promulgation of the Connecticut Order contains a statement similar to that just read.

In both of these decisions a differential is justified based on the higher Class I utilization and the resultant higher prices paid to producers for milk from dairy farmers located in the areas nearby to these markets.

Also, in both of these decisions the rate of the differential is justified by the Secretary, as it is the same rate as applied in adjacent markets (Boston, Worcester, and Springfield).

There was no mention of the additional value of nearby milk or even an attempt to measure what the rate should be based on the higher utilization rationale. It appears that this should be necessary in order to determine the rate customarily applied by handlers.

(2132) It does not seem feasible that handlers would pay nearby producers a higher price than they would be willing to pay upcountry producers, adjusted for transportation cost, unless the nearby milk had some additional value to the handler receiving the milk. With or without Federal or State regulation handlers will tend to purchase milk of equal value at the cheapest source. If that statement is true, it then follows that prior to Federal regulation handlers paid nearby producers an additional amount of money because the handler receiving the supply determined that that supply of milk had some additional value over other supplies he might obtain.

One of the major considerations in promulgating Federal Milk Marketing Orders for the Southeastern New England and Connecticut marketing areas was the fact that local supplies were becoming homeless because of imports of unregulated cheaper priced milk.

This is certainly an indication of the unwillingness of handlers to pay higher prices for nearby producer milk. Yet, when the decision was made the Order provided a differential payable to local producers, based on the supposition that handlers customarily applied such a differential, although it was demonstrated in the record and recognized in the decision that handlers were dropping local supplies in favor of more distant supplies.

I am also unable to bridge the gap between the situation that existed prior to the promulgation of the Boston Order and (2135) the way the provision was written into the Order.

The proponents of a farm location differential at that time established the rate for the differential as a rate which handlers in the city plant area were paying for milk over and above prices paid for milk in the 21st Zone, plus 54 cents established as a proper transportation differential at that time. It was established that these handlers were paying or applying such a differential. However, when the provision was incorporated in the Order, it did not require handlers to continue paying the differential but rather required such payments to be deducted from the total pool value, in other words, paid for by upcountry producers.

As I have said earlier, it does not seem feasible that handlers would pay a differential for nearby milk unless such milk had additional value over their alternative sources of supply.

II. WOULD HANDLERS CUSTOMARILY APPLY A DIFFERENTIAL UNDER TODAY'S CONDITIONS?

This is the heart of the question that the Secretary must decide in regard to whether the differentials should be deleted or retained.

There are many reasons why supplies from farms in nearby areas could have had additional value to the user thereby justifying the handler's willingness to pay an additional sum for such milk, prior to 1937.

Many of the smaller handlers initially experienced cost (2134) in excess of the basic cost of an upcountry supply of milk, plus the normal cost of transportation, receiving and transferring, because of the minimal quantities involved. The method of transportation from country supply stations was by rail. The original license (No. 15) provided for a transportation allowance or a difference between the 191-200-mile zone price and the base price f.o.b. Boston of $0.7103.

This amount was composed of 23-1/4 cents per hundredweight as a country plant handling allowance, three cents per hundredweight for can service, and 44.78 cents per hundredweight for freight from the 20th Zone at less-than-carload rates. (Source of information is a thesis prepared for the Market Administrator under Federal Milk Order No. 4 and presented as partial fulfillment of the requirements for the degree of Doctor of Philosophy, Department of Government, Harvard University, entitled "The Development of the Licenses and Order Regulating the Handling of Milk in the Greater Boston, Massachusetts Marketing Area", November 3, 1933-June, 1946, Gilbert R. Barnhart.)

(2135) I would like to make an insert here.

What is the number of the exhibit that contains the historical study on transportation differentials?

In Exhibit 25, November 1933, the city plant differential is shown to have been 61.77 cents, which is to the

same period that I have just referred you here, and shown that Barnhart's thesis says 71.3. And I have not been able to reconcile yet as to which one of these is actually correct, but I have talked to Mr. Lee, and he is checking out the figure that is in Exhibit 25, and possibly will find out then which one of these is actually the correct rate, as to what the city plant transportation differential was in license 15.

Examiner Holstein: Does this record show what license 15 was? Mr. Tipton, can you state for the record what license 15 was?

The Witness: It was the original license regulating milk marketing in the Boston milk marketing area.

Back on the statement.

(2136) Mr. Tipton: If the handler's cost in purchasing milk from a plant in the 191-200-mile zone as compared to purchases direct from producers nearby delivered to the city plant exceeded the $0.7103 per hundredweight differential he could logically pay nearby farmers the additional amount and still have operated in a rational manner in that he would have equated his alternative prices.

As of August 1, 1937, the differential was established at $0.5447 per hundredweight (see Exhibit 25) which reflected carlot transportation rates. A handler who did not need a carlot could experience a cost in excess of the 54-cent differential. If this occurred again, the handler could pay a premium for nearby milk to equate the cost of purchases from upcountry sources and from nearby sources delivered direct to his city bottling plant.

This same principle works in reverse. That is, if the zone location differential exceeds the actual cost, handlers may not be willing to pay the nearby city plant price and will purchase supplies from more distant sources. The decision is made to a great extent on the basis of which is the less costly source of supply.

Class prices established under the Order are minimum prices. If nearby milk had any additional value, that

is additional to the place utility value compensated for by the transportation and country plant differentials, handlers would (2137) be paying premiums for such milk. Instead of having a premium situation, we are presently experiencing a situation whereby handlers in the city plant zones are discontinuing purchases of supplies from nearby local producers and are purchasing from more distant sources. The local nearby milk ends up being used for manufacturing purposes. This has occurred in part because the transportation differential permits a greater allowance than is necessary to equate the price of upcountry and nearby milk when delivered to the same city plant. Thus, handlers do not pay premiums for nearby milk, and secondly they will not continue to purchase such supplies when a cheaper source is available.

I think these two situations clearly prove that handlers are not willing to pay more for nearby milk and therefore do not "customarily apply" a differential to such milk under today's circumstances.

The cooperatives that I am representing are all located up country and they supply a considerable volume of milk to city bottling plants. The milk that is delivered to an upcountry plant during one day is available for bottling the following morning. The regularity of delivery is just as dependable as deliveries direct from producers in the nearby areas. There is no more variation in quality between upcountry and nearby milk than there is between supplies within each of the two areas.

There is not a logical reason for handlers to customarily (2138) apply a differential for nearby milk and they are not and will not do so.

III. The Nourse Committee Report

The report to the Secretary of Agriculture by the Federal Milk Order Study Committee which was pro-

duced through the facilities of the U. S. Department of Agriculture and dated April, 1962, contained a section beginning on pages 11-4-32 entitled "Special Location Differentials to Nearby Producers". I would like to quote from some paragraphs included in this section.

"Precedents for nearby differentials were established during the period of collective bargaining before there were any Federal Orders. Various advantages have been claimed for nearby milk from the viewpoint of handlers —such as more desirable seasonality, earlier and more dependable arrival at city plants, easier and more economical supervision of producers and quality and the possibility of direct hauling from the farms thereby saving the expense of country plant operation. However, the major purpose of nearby differentials apparently has been to compensate nearby producers for sharing market Class I sales with more distant producers in a market-wide pool. This principle seemingly was founded on the belief that in the absence of regulation, a higher percentage of nearby milk would be sold for fluid use.

(2139) "Producers in areas with a long history of nearby differentials have based their production decisions on them and capitalized their value into land and facilities. Consequently, the differential payments are no doubt regarded by the participants as valuable "market rights".

"On the other hand, the manner in which nearby differentials are applied has a decided impact on the inter-market relationships. Their use and effect may need careful re-examination in the light of present conditions of increased mobility of milk supplies. For the payment of special nearby differentials out of pool funds depresses the uniform price to producers outside the differential zones and thus tends to limit the extent of the supply area and maintain higher fluid utilization under

an order than would prevail otherwise. At the present time, this effect is so small in some instances as to be negligible. In others it is very significant.

"Under the Boston order, nearby differentials are paid on only about 6 per cent of the pooled milk and the uniform price is depressed less than three cents per hundredweight by these payments. Under the New York-New Jersey order, slightly less than 20 per cent of the pooled milk qualifies for the nearby differentials and the uniform price is depressed about six cents per hundredweight.

(2140) "On the other hand, under the Federal Orders for Worcester, Springfield, Southeast New England and Connecticut nearby differentials are paid on 65 per cent to more than 90 per cent of the pooled milk and uniform prices are depressed from about 30 cents to more than 40 cents per hundredweight. In 1960, 90 per cent of the pooled milk under the Connecticut Order qualified for the 46-cent differential, and 3 per cent for the 23-cent differential. The total amount paid in nearby location differentials was equivalent to 43 cents per hundred pounds of all pooled milk and the uniform price to producers outside the differential zones was depressed to that extent. Thus, the attraction of the high-blended price resulting from a high Class I utilization under the order is substantially reduced with respect to producers in the outlying areas.

"In circumstances where a high percentage of milk qualifies for the nearby differentials the producers who participate derive little net gain except for the pool tightening effect of the lower blended returns in the outer zones. Thus, order provisions for nearby differentials of this magnitude can and do effectively limit access to the pools."

• • •

(2141) Pages III-22:

"The committee questions whether the special location differentials for nearby producers now provided for in several of the orders are justifiable under present conditions especially where high percentages of the pooled milk are used in Class I. It therefore recommends that the justification for such differentials be reexamined, and that where appropriate, they be either reduced or eliminated."

These statements set out very clearly our position and reasoning. I will now develop some of the points more thoroughly.

IV. Milk subject to nearby farm location differentials

Table I of Exhibit No. 55 contains data pertaining to the number of producers located in various designated areas under each of the Orders. During 1961, 6.7 per cent of the producer farms supplying milk to Boston handlers were located in the nearby area of Boston. Less than 1 per cent were located in the intermediate area and the remaining 92.7 per cent were not in either of the nearby areas. In the Connecticut market the proportions are just about reversed.

Approximately 90 per cent of Connecticut producer farms were located in what is designated the nearby area, almost 3 per cent were in the intermediate area and about 7 per cent (2142) were more distant from the market. The Southeastern New England Market Administrator does not report the number of producers in the nearby and intermediate areas separately, but rather reports the total number of producers in both areas. The number in the intermediate area, according to the Southeastern New England Market Administrator's office, is very small, and I have included the total under the

number of nearby producers and treated their figures as if there were no milk from intermediate zoned farms.

The proportion of producer farms in the Southeastern New England market that are located within the nearby area as specified in that Order varies considerably because of the entering and exiting of country supply-type plants.

Table I of Exhibit No. 55 shows that about 57 per cent of the producer farms were located within the nearby area and about 43 per cent from distant sources. The proportion of producer farms located in the nearby farm locations differential area from which milk is received by Springfield regulated handlers reflects the exiting of all country supply-type plants.

During August, 1962, about 92 per cent of the milk came from nearby farms, almost six per cent from intermediate area farms, and only about 2 per cent from distant producers.

The Worcester Order does not designate any intermediate area. During 1961, about 63 per cent of all producer farms were located within the nearby area and the remaining 37 per cent (2143) were not in a farm location zone.

Table II of Exhibit No. 55 reflects the amount of milk received by handlers from farms in each of the farm location differential areas. I will not cover these in any great detail. The proportion of producer farms and the proportion of milk coming from such farms are highly correlated in the Boston and Connecticut Orders. Southeastern New England producer farms located in the nearby differential area accounted for a larger proportionate share of the milk receipts of handlers than is indicated by the proportion of farms located in the farm location differential areas. The Worcester market statistics reveal the same type correlation as the Southeastern New England Order.

Under all five of the Orders, about 36 per cent of the producer farms are located within what is presently

the nearby area of the Order regulating the handler to which they are delivering, slightly over one per cent are in the intermediate zone area, and about 63 per cent are not in the differential zoned area, as established by the Order regulating the handlers to which they are delivering.

The proportion of the total milk supply is quite different. Milk from farms subject to the 46-cent differential under each one of the present Orders represents about 44 per cent of total producer receipts under all five of the Orders. Milk receipts from producer farms located in the intermediate area are slightly over one per cent which is roughly equivalent to (2144) the same proportion as the number of farms in this area. Milk delivered from farms not subject to a farm location differential under the present regulations represents about 55 per cent of total producer receipts by handlers regulated by the five Orders. This compares to about 63 per cent of producers located in such an area.

V. The impact of the deductions to pay nearby farm location differentials

Table III of Exhibit No. 55 reflects the total deductions to pay farm location differentials and the reduction in the blend price to pay such differentials.

In preparing this table, I added together the total deductions as reported in the blend price announcement of each of the Orders. It was necessary to estimate the deduction applicable to the Worcester Order from December 1961 and August-November, 1962.

The cost per hundredweight to producers whose farms were located in areas that did not receive a farm location differential is shown in the second column. The cost under the Boston Order was only 2.9 cents per hundredweight during 1961, compared to a cost of 42 cents to Connecticut producers.

The impact of these deductions can be shown better by referring to Table IV of Exhibit 55. Here I have computed the actual change in the pay price to producers under the separate Orders if farm location differentials would not have been in (2145) effect. In August, 1962, Boston producers receiving the 46-cent differential would have had their price reduced by 43 cents, producers receiving the intermediate differential would have received about 20 cents less, and producers whose farms are in locations at which no differential is applicable would have received about three cents more.

Connecticut producers whose milk is subject to the payment of a farm location differential at the 46-cent rate would have received only about 2 cents less per hundredweight had no farm location differentials been payable in August, 1962.

Producers receiving the 23-cent differential under the Connecticut Order would have experienced an increase of about 21 cents per hundredweight, and those whose milk was not subject to any farm location differential would have received about 44 cents per hundredweight more. The effect to producers in the three similar areas described under the Springfield Order would have been identical.

Producers receiving the 46-cent differential under the provisions of the Southeastern New England Order during August, 1962, would have received about 20 cents less had the differentials not been in effect. Those producers that received the 23-cent differential would have actually gained three cents had there been no farm location differentials payable, and those in distant zones would have received about 26 cents per hundredweight more.

(2146) Worcester producers who received farm location differentials during August, 1962 would have received about 11 cents less had there been no differentials payable. Those in the distant area would have received about 35 cents more.

VI. The use of farm location differentials to align producer prices rather than to compensate for a higher utilization

When discussing price alignments, I think it would be more proper to compare alignment of the use value per hundredweight of milk than the announced blend prices. In this connection, I prepared Table V of Exhibit No. 56. In computing the blend that would have occurred, as shown in the second column of the Table, I have added the amount per hundredweight that was deducted from the blend price to pay the farm location differentials. This, then, more nearly reflects the use value of the milk in each of the pools.

This reveals the true magnitude of the malalignment of returns to producers in accordance with the utilization of all milk received by all handlers selling milk in the entire marketing area.

The average price of all the milk in the Connecticut pool in August, 1962 was 70 cents per hundredweight over the average price of Boston milk. If you adjust the Connecticut price for the take-out/pay-back plan, the difference was about 53 cents per hundredweight. The (2147) Southeastern New England milk was about 51 cents greater than for Boston. Worcester milk had an average price of about 48 cents per hundredweight over Boston, and Springfield 29 cents over Boston although the blend price was 12 cents below Boston's blend price.

As a practical matter, Connecticut producers received approximately 45 cents more per hundredweight in 1960 than Boston producers, after adjusting for the distance the plant of delivery is located from the market.

The figures cited show conclusively that whatever degree of price alignment there has been among the New England orders has been maintained through adjustments in returns among groups of producers rather than on the basis of the value of the milk.

This, we think, is wrong by any standard of measurement, and should not be abetted by the Federal Government.

The objective of the Agricultural Marketing Agreement Act of 1937 in authorizing marketwide pools was to return to all producers delivering to all handlers selling milk in the marketing area the use value of all the milk. We propose to accomplish this by regulating all handlers selling milk into the New England marketing area which, as I have already demonstrated, covers what is now regulated by five Orders and by deleting the farm location differentials which have substantially altered returns among producers.

(2148) We have effectively demonstrated that conditions have changed substantially. Handlers will not today customarily apply a differential to nearby milk in excess of the receiving and transportation differentials, and there is no justification for paying farm location differentials through a pool adjustment.

VII. The effect of our proposal on producer prices

As mentioned in earlier statements, I have made some computations to help illustrate the effect of our proposal on the prices payable under the Order to certain groups of producers. Table VI of Exhibit No. 55 reflects a close approximation of what the blend price would have been for selected periods had the orders been merged. I have included computations showing what the blend would have been with and without farm location differentials.

The figures shown under the column entitled "Blend Price of One Order with Farm Location Differentials" were derived by determining the proportion of producer milk pooled under all five of the Orders that was pooled under each of the Orders.

The percentage figures were then multiplied by the 21st Zone uniform price for each respective Order. The sum of these products represents the figure shown. Table III of Exhibit 55 shows the total value of all money deducted to pay farm location differentials and the rate per hundredweight. By adding the rate per hundredweight, as determined by combining the total amount deducted under each of the five Orders and dividing that sum by the total amount of producer milk pooled under each of the five Orders, to the figures shown under the (2149) column entitled "Blend Price of One Order with Farm Location Differential", I have arrived at the figures shown under the column entitled "Blend Price of One Order without Farm Location Differentials".

This latter column is representative of the effect of our proposal to put the entire marketing area under one Order and to delete the farm location differentials from the merged Order. I recognize that this price is not an actual price that would have existed under our entire proposal, as we are also supporting other changes that will also have some effect on the blend price, but it was impossible for me to measure the effect of these changes. The change of the basing point for determining the zone location of country plants in itself will have an impact on the blend price, but I do not have all the information necessary to calculate this effect. In any event, it will be very minor.

With only two exceptions the proposal will provide a higher 21st Zone blend price than is now provided by each of the Orders. The two exceptions are for October and November, 1962, for producers under the Southeastern New England Order.

Table VII of Exhibit No. 55 will better assist in analyzing the changes in prices payable to producers in different areas. I have computed the price changes that would have occurred to producers had our proposal been in effect for selected months.

(2150) In all the months shown, producers now receiving nearby farm location differentials would have experienced lower prices, ranging from about only 15 cents for producers so located under the Boston Order during October, 1962 to 53 cents for producers similarly located under the Southeastern New England Order. The Southeast New England price was the highest price of all the blend prices during October. Producers whose farms were located in the 46-cent farm location differential received, during October 1962, about $1.36 per hundredweight more than Boston producers delivering to plants in the 21st Zone. When this difference is adjusted by the transportation differential, the difference is still 82 cents per hundredweight. We maintain that there can be no justification for any of this difference as illustrated by our entire testimony.

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[2335] MR. LENT: May I ask a clarifying question?

EXAMINER HOLSTEIN: Yes, Mr. Lent.

By Mr. Lent:

Q. Just so I can get it straight in my mind what you are talking about, what do you mean by "make sure"?

As to the dealer changing from nearby to up-state milk.

[2336] A. You know, to try to explain that, Mr. Lent, if you are buying a load of milk up-country, and you are going to drop that load, you have got to have another load somewhere as soon as you can get it. And I meant by making sure that he wanted to get established with the nearby supply as promptly as he could.

Q. May I suggest the words—the context in which you use the words "make sure," I thought you used them in the context that the nearby supply was surer than the up-country supply.

A. No.

* * *

[2155] KEN GEYER

was called as a witness and, having been previously duly sworn, testified further as follows:

DIRECT TESTIMONY

THE WITNESS: In view of the fact, Mr. Examiner, that Mr. Tipton read into the record excerpts from the Nourse Committee report, I would like to read into the record part of a footnote by the late Dr. C. W. Swonger, who was a member of the committee, and the only member, I guess, from New England, commenting on this particular portion of Mr. Lent's and Dr. Spencer's effort that was quoted by Mr. Tipton.

MR. TIPTON: Excuse me. Is that not included in one of the exhibits that are already in? Or are there parts of that–

EXAMINER HOLSTEIN: What is the status of the Nourse Committee report?

MR. CHERNAUSKAS: It is not in evidence.

EXAMINER HOLSTEIN: No. I didn't think that was an exhibit.

THE WITNESS: I don't desire to clutter up the record with it, if it is not already in there.

MR. TIPTON: The report is not, but I thought the entire dissent of Dr. Swonger was in–I am looking for it [2156] now–Exhibit 24.

EXAMINER HOLSTEIN: Off the record.

(Discussion off the record.)

THE WITNESS: No, there isn't enough in that exhibit, Mr. Tipton.

This is the footnote of dissent by Dr. Swonger, which appears at II, Sec. 4 in the so-called Nourse Committee report:

"There is so much that I find objectionable in Part II, Section 4 of the committee's report, that I am forced to submit extensive dissent. It is impossible effectively to present my objections to this section of the report without going into some detail of facts and figures. Besides the narrow regional context in which much of the section is couched, I object to a number of unwarranted assumptions, inferences and conclusions, particularly with respect to the effect of nearby loca-

tion differentials, health regulations, and to some extent the application and effect of compensatory payments or assignment provisions to milk moving in either direction between federal order pools.

"At numerous points and with minor variations in wording, this section refers to the desirability of achieving similar patterns of utilization and of uniform prices, as though they were the same thing, when in fact they are not.

"The reason they are not the same is due to the effect of nearby location differentials of the distribution of the [2157] proceeds of the pools and the widely different variations of the relative proportions of nearby and distant producers.

"'Nearby location differentials' are deeply imbedded in the New England order and in the New York-New Jersey order and have been justified as a recognition of the historical pattern of prices which existed prior to regulation or as compensating nearby producers for sharing a part of the fluid market which they formerly enjoyed with producers more distant from the market. The federal orders did not create such differences in prices, but merely recognized their existence. They have been capitalized into land values, or were in the years prior to regulation.

"It is easy to point out that utilization percentages under the Connecticut order average higher than for New York–New Jersey. The same is also true as between Connecticut and Boston, and by about the same margin. Yet for the year 1961, the simple average of blended price at the Boston 21st zone was $4.52, and at the same zone for Connecticut was $4.56. The same relationship applied as between nearby producers in the two markets. For December 1961, the blended prices to producers in the Connecticut market was 7 cents below Boston at all zones.

"It is true, of course, that there are relatively more nearby producers in Connecticut or southeastern New England, Springfield, or Worcester, than in Boston or New York. The Springfield market has a higher utilization pattern than [2158] Boston but blended prices for 1961 averaged 18 cents below Boston. For the same period blended prices in the New York–

New Jersey market for 3.7 percent milk averaged 20 cents below Boston. But this was a period when the New York-New Jersey Class 3 price was running well below Class II prices in New England and below the level of competitive prices paid for manufacturing milk.

"Apparently nearby differentials are acceptable if they apply to a relatively small proportion of the milk, but otherwise they constitute an unwarranted 'burden' on the pool. In Boston, nearby differentials apply to about 6 percent of the milk in the pool, or considerably less than New York. They apply to a much larger proportion of the milk in other markets of southern New England where the same reason is stated that there are relatively more nearby producers. Yet their effect is the same in Boston or Connecticut—to establish a particular pattern or relationship of prices as between nearby and more distant producers, which is identical in both markets. Elimination of the nearby differentials contained in the Connecticut order would aggravate the price disparities in relation to other surrounding markets. In this connection the report suggests that 'nearby differentials could be maintained, but vary inversely with the percentage of pooled milk used in Class I.' Such a system as suggested would result in serious disproportion of blended price relationships between markets [2159] in New England and New York, both to nearby producers and those located more distant from the market. Reference is made to uniform pattern of nearby differentials used in New England markets. Any deviation of the type proposed would, for instance, depress blended prices to nearby producers in Connecticut relative to Boston or New York and raise blended prices to Connecticut producers in more distant zones substantially above Boston or New York. To create price disparities rather than remove them as between producers similarly located with respect to the market. If we accept nearby location differentials as a fact of life in New England and New York, it follows that 'similar patterns of utilization' would result in wide disparities in 'uniform prices' as between producers similarly located with respect to market and vice versa. We cannot have it both ways. Of the two, it seems to me that approxi-

mate uniformity of blended prices is far more important, and competition tends to achieve this result."

That is the end of the quotation I wish to have in the record from the Nourse Committee report.

* * *

(2162)

For 1938, the blend price for 3.7 percent milk at the 201-210 mile zone for Boston averaged $1.09. For 1930 it was $1.90. For 1940 it was $1.95.

For 1959 the figure was $4.61. For 1960 $4.72 and for 1961 it was $4.52.

The point I am trying to make is that back in those earlier years when the 48 cent and 23 cent rates were established, the 48 cent rate was 23 percent of the blend in 1938, 24 percent in 1939 and 24 percent in 1940. For the past three years, however, the 46 cent rate has been only 10 percent of the 200 mile zone average blend price.

With no change in the rate of the nearby farm location differential, therefore, it is obvious the percentage reward to the nearby producers is much less than half what it was when the rate was originally established.

Nearby farm location differentials are certainly vital, also, to enable the Connecticut handlers to compete with New York handlers in the important supply area of Dutchess and Columbia Counties in New York, where there is competition between New York City and Connecticut handlers for milk supply.

It is certainly our hope that nearby location (2163) differentials will not be discontinued as a result of this hearing and that no change will be made in the present rate.

* * *

Cross Examination by Mr. Tipton:

Q. Is it true that the utilization in the Connecticut market of Class I milk has been much higher percentage-wise

to the total supplies than in the Boston market; is that right? A. For over 50 years, I guess.

Q. And do you attribute any part of that higher utilization to the fact that you have had nearby farm location differentials? I am talking now about after the federal order went into effect in Connecticut. A. Well, obviously without nearby farm location differentials, the Connecticut price at the 200-mile zone, the month that the order went into effect, would have been way higher than the price at any other New England order in that same area and I suspect that the utilization would have gone down but obviously every country plant in Vermont would have been anxious to get qualified for the Connecticut order to secure the higher blend price.

Q. So the nearby differentials have reduced some of the (2164) incentive for plants to enter the market, or for milk to enter the market. A. Have reduced some of the incentive?

Q. Yes, sir. A. Well, the incentive has never been there; so I guess you couldn't reduce it; because the incentive wasn't there to any great degree apparently at the time that the order went into effect. But certainly they have had an effect. Or to put it the other way, as I have already stated, the incentive to get into the Connecticut market would have been very much higher if the order had been written without nearby differentials.

Q. Do you know of any handlers that are buying nearby milk that are applying a premium over the order price or over the blend price paid their producers for such milk? A. You are speaking about in the Connecticut order?

Q. Yes. A. Oh, yes.

Q. And that is actually being paid by the handler; is that not correct? A. Yes.

Q. Could you tell me about how much? First, how much is the premium? A. Oh, well, it varies all over the

lot. There are a lot of small handlers in Connecticut who have had the same producers right in the neighborhood for 30 or 40 years. There (2165) are various kinds of premiums paid. In the case of our own association, the premiums that are paid bear some relation, at least, to services rendered.

Q. Well, could you give me an idea of what is the highest premium that you know of that is paid by a proprietary handler for milk delivered directly to his plant? A. You are talking about ordinary market grade milk now?

Q. That is right. A. Oh, I would expect 15 cents, probably.

Q. And about what proportion of the milk would any premium apply to? A. Oh, any premium would apply to—

Q. Again I am speaking of normal quality milk. A. Oh, I expect 85 percent. That is pulled right out of the air but it wouldn't be too far off. All the handlers buying from our association except two are paying some premium.

Q. But part of this, of course, would be for the service your association is performing? A. That is right.

Q. If the class prices—if it was required that the handlers paid the 46 cents and 23 cents differentials for milk located in these areas, do you think they would continue to purchase milk from these areas to the extent that they do? A. I don't know just how to answer that question, Mr. (2166) Tipton, without a little more explanation from you. You mean if the government should suddenly discontinue the nearby differentials entirely, then do I think that handlers would pick them up and start to pay them?

Q. Yes, I think that is what I mean. A. No, I would expect not. Not to the degree that they are, anyway.

Q. At the last part of the quote in Exhibit 56, the quote from the late Dr. Swonger, you make the statement

that "the advantages of proximity to the market had been capitalized into load values long before federal regulations."

The first question is: What advantage of proximity are you talking about? A. Well, in the first place, it is Dr. Swonger talking.

Q. You adopted it as your statement. A. Well, Dr. Swonger was available for cross examination at the time he put the testimony into the record in the previous hearing. I have no quarrel, however, with and am happy to adopt all of the testimony that he put into the record.

I assume that the advantages of proximity that he is talking about is the fact that nearby producers in Connecticut, well, leaving out 1933, '34 and '35, along in there, I would expect have always enjoyed at least a 70 percent Class I utilization, since classified pricing started. And I assume that is the type of proximity that he is talking about or (2167) proximity advantage that he is talking about.

Q. So you are talking about the advantage to these producers on the prices that they had received by being closer to the market? A. Sure.

Q. You also state that these advantages which we have established as price advantages have been capitalized into the land values long before federal regulation. May I ask what significance you give this in retaining nearby farm differentials? A. We are getting into the area of the trained economist now, of Mr. Tipton, which everyone knows I am not. I can't use any of the technical terms that describe how these things come about, and their effect, and I am not very good at explaining them without the technical terms. But it is obvious that if for many years a certain area—and let's take in this case the state of Connecticut—has year after year enjoyed a certain relative level of milk prices relative to feed costs or labor costs or whatever you want to use, that this gradually

determines the price of farms. And it is easier to see how it works if you work it in the other direction. If you suddenly reduce permanently the price of milk in Connecticut by 50 cents a hundredweight relative to all the surrounding area, and the costs, the out of pocket costs, that go into production, there is essentially no doubt in my (2168) mind that land values would drop very abruptly, that people who have continued to produce milk over the years and have considered that one of the returns they are getting is a substantial, gradual increase in the value of land, would suddenly disappear.

I think that is what Dr. Swonger was inferring when he spoke about their having been capitalized into land values before regulation, and continuing since regulation, I might add.

Q. Then would you contend that it should be one of the purposes to perpetuate these land values, one of the purposes of federal milk regulation is to perpetuate these land values? A. I would like to answer that question yes or no, but I simply can't. I guess my answer is such that you can't characterize it as either. I think that the entire history of these nearby differentials indicates why they were adopted in the beginning and why they have been continued. The findings that were made by the Secretary's staff as late as late 1958 in the case of the Southeastern order, and early 1959, in the case of the Connecticut order, indicate that at that time at least the Secretary was convinced that this was a legal and logical and economically sound way to establish the price pattern in both Connecticut and Rhode Island, and the nearby area, that is, the Southeast New England area. And I don't believe that anything has taken place that has seriously changed that (2169) situation since early 1959. I certainly think that the thing needs to be studied. If the levels are wrong, maybe they need increasing; maybe they need decreasing. But certainly I think it would be

disaster to adopt the proposal that you made, even though your question, I realize, was: Do I think that it should be the purpose of the federal order to perpetuate these land values. I don't think that the purpose—I guess actually my answer, after I have had time to think out loud, is no. I don't think that I could answer yes. I must answer a qualified no, at least, in the fact that I don't think these federal orders should simply perpetuate these land values. I think that excellent economic study has been made of the problem up to now, and I hope that it will continue to be made.

Q. From your last remarks, I gather that you think there should be some attempt to measure what the nearby farm location differential rate should be. A. Yes. The Secretary is bound to consider your proposal before a recommended or final decision is made, and he will certainly have to re-examine them before your organization. You represent a group of responsible cooperatives. They have made a serious proposal to take them out of the order entirely. And I am sure the recommended decision will contain some language as to why they did or didn't adopt your proposal.

[2170] DR. WELDEN: Would it be in order to have Mr. Geyer read into the record Section 608(c)(b) of the Act? Or can that be taken judicial notice of?

EXAMINER HOLSTEIN: The Act is always part of the proceeding, and you may make any reference to the Act that you wish, sir, in the course of your brief or your suggestions to the Secretary after the proceeding is over.

MR. CHERNAUSKAS: Or you may examine on the contents of the Act if it relates to his testimony.

DR. WELDEN: O.K.

EXAMINER HOLSTEIN: What is the purpose for which you wish to refer to the Act, Dr. Welden?

DR. WELDEN: Section 608(c)(b) of the Act provides in Rule II the following language:

"For the payment to all producers and associates [2171] of producers delivering milk to all handlers of uniform prices

for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, subject in each case only to adjustment"—and skip (a) and (b) and come down to (c): "The location at which delivery of such milk is made."

My only point, Mr. Hearing Master, was to establish that in my opinion there is a firm legal basis for nearby location differential.

EXAMINER HOLSTEIN: That type of reference, then, Dr. Welden, is more properly made in your brief, rather than by a question on cross examination. You are always free to point out to the Secretary of Agriculture that the law sustains a certain position which you take.

DR. WELDEN: O.K., sir.

EXAMINER HOLSTEIN: Are there any further questions?

Does anyone wish to question Mr. Geyer on his testimony with respect to Proposal No. 52?

That appears to be all on that.

THE WITNESS: I have a brief addition I would like to add, then.

EXAMINER HOLSTEIN: Go right ahead.

THE WITNESS: Mr. Tipton started to ask a question and changed his mind, which reminded me that I would like to stress just a little the same paragraph on page 2 that he was talking [2172] about, which sets forth the percentage rates back in the late 30's when the 46-cent nearby differential was originally established.

The reason for putting in that paragraph was simply to indicate that these nearby differentials have not been increased over the years, as we have had inflation, and milk prices, both Class prices and blend prices, have increased.

It seems that if it was economically sound to establish a differential which turned out to be nearly 25 percent of the blend price in the late 30's, a 10 percent nearby differential at the present time would seem to have recognized that the Secretary has been gradually reducing the capitalized value of these nearby differentials over the 25 years or so that the orders have been in effect.

That concludes my testimony.

EXAMINER HOLSTEIN: Mr. Tipton.

By Mr. Tipton:

Q. I would like to go ahead and ask a question on this. When the rate of the 46 cents and 23 cents was originally established, the 23-percent figure that you speak of, was the 23 percent a cause or an effect of the 46-cent differential? In other words, did they establish the 46 cents on the basis that it was 23 percent of the up-country price? A. No. But in considering the level that they would establish at that time, I am sure they took a look at the Class [2173] I and Class II prices. I guess we had four classes at that time. But the various class prices, and the blend prices existing at that time —and I am sure that somebody, in writing a recommended decision, although they weren't very detailed at that time, certainly wrote an economic justification, and must have in the economic justification that they wrote on it have determined that the rate was not excessive in relation to milk prices at that time.

Q. But actually they established what the rate should be, and the percentage relationship was a result of the rate that they established; is that not correct? A. Well, we can only speculate on that. I don't know whether the egg came first, or the hen, in this case.

MR. TIPTON: That is all.

EXAMINER HOLSTEIN: Any further questions?

DR. WELDEN: Is it permitted to reseat the implications of your last statement as to the character of the previous decisions?

THE WITNESS: This is a matter that has come back to haunt me, Mr. Welden. In those days I did not work with the federal order, but I felt very strongly that we were going to have our federal orders and insisted that recommended decision or final decisions must contain a published economic justification for every proposal that was denied and every proposal that was adopted.

* * *

[2249] WILLIAM J. NEWMAN

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT TESTIMONY

THE WITNESS: My name is William J. Newman. I reside at 145 Belvedere Drive, Cranston, Rhode Island. I am employed as manager of Local Dairymen's Cooperative Association, Inc., and appear in their behalf.

Local Dairymen's Cooperative Association, representing more nearby producers in the Southeastern New England market than any other organization, has membership in Connecticut, Rhode Island, and Massachusetts. LDCA's main office is located at 511 Westminster Street, Providence, Rhode Island.

I worked for the New Bedford Milk Producers Association, New Bedford, Massachusetts, from 1946, serving as their manager from 1951, until that association became part of LDCA [2250] on January 1, 1961.

As manager of the New Bedford Milk Producers Association, I filed the application for Federal regulations which led to the hearing that resulted in the Southeastern New England order. Although I only asked for regulations covering the area in which the New Bedford Milk Producers Association operated, I recognized the need for regulations in what is now the Southeastern New England area, and, when shortly thereafter producers marketing milk in other sections of the market reached a like decision, we joined with them in proposing the Southeastern New England Order.

The proposal for regulations in Southeastern New England under one order combined several former independent markets. Unlike the proposals to merge all or several markets contained in the hearing under consideration, the proposal for a SENE order came from practically all the producers marketing milk in the area. These producers agreed that marketing conditions, production patterns and costs, and sales requirements were similar enough to use one order for the Southeastern New England area.

This is not true of the proposed consolidation of all New England markets.

The Southeastern New England market has many characteristics and requirements that justify its continuance as a separate market.

[2251] 1. Although milk is sold in the area by a few large handlers who distribute milk in more than one market, the SENE market is serviced by an unusually large number of handlers, whose limited volume make them dependent upon nearby producers for their supply. See Exhibit 7, pages 13-17, pages 59-63, and page 58.

2. A substantial part of the supply of nearby milk for the Providence market comes from producers located in Connecticut. This milk is attracted to the Providence market by the price advantage that the Southeastern New England market has over neighboring markets because a larger per cent of receipts are sold at the Class I price.

Equalization of blend prices between Connecticut and Southeastern, and to a lesser extent between Worcester and Southeastern could seriously affect the supply of nearby milk for the Providence market. I feel that small dealers will be faced with a definite cost disadvantage in order to get their milk supply if the blend price incentive is eliminated by the consolidation of all markets.

3. The Southeastern area is bounded with the ocean on two sides, and contains miles of seashore. The area attracts a large number of summer vacationists, causing milk sales to reach their peak in the months of July and August. This sharp increase in Class I sales helps all of New England, but especially the Southeastern New England market.

[2252] Nearby farmers have been encouraged to increase milk production during the summer and fall months.

Even though the effect of these temporary sales benefits the Southeastern New England blend price during the summer months, it distorts the blend price advantage that SE has over the other markets. Without this effect, the blend price advantage SE would then have would be justified by the necessity of encouraging milk to move in our direction to meet requirements.

4. For several reasons, location of the market and even production being two, our market uses better than 90 per cent of its direct delivery milk as Class I. Only limited surplus handling facilities are needed in the market area.

LDCA contends that the returns to our members for their milk and the supply of milk for the many dealers who depend upon nearby farmers for supply requirements would be seriously affected by a merger of our market with other markets. This would be done without justification and probably without giving producers in the area an opportunity to make the decision.

We feel that the proposal to do away with nearby differentials is also unjustified, and oppose it vigorously.

EXAMINER HOLSTEIN: No, just a minute–

THE WITNESS: That is the only statement I have like that.

EXAMINER HOLSTEIN: All right. Go ahead.

THE WITNESS: The board of directors of LDCA, after [2253] discussing these proposals with the members at local meetings and the annual meeting, authorized the prepared testimony presented by Dr. Young. Dr. Clarke and Dr. Pierce have also been authorized by LDCA to testify for us, along with the Connecticut producer organizations, in opposition to the proposals to consolidate markets, and those that have to do with differentials.

LDCA endorses the prepared statement on these proposals made by Mr. Geyer in general and particularly to that part which applies to the Southeast market.

That concludes my statement.

EXAMINER HOLSTEIN: Are there any questions? Does anyone wish to question Mr. Newman?

MR. CARROLL: I think I have one.

EXAMINER HOLSTEIN: You almost missed it.

CROSS EXAMINATION

By Mr. Carroll:

Q. Will you explain to me why in your opinion the small dealers would be at a disadvantage under the proposal?

A. In order to import milk from great distances economically you must be able to buy your milk in 450 or 500 jug tank loads, and we have very many small dealers in this particular area who do not have that volume.

I know of my own experience in the New Bedford market, that there were two or three dealers who thought they could do better by going to New York State to buy their milk, and when [2254] they found because of their size volume they could not afford to bring the milk in, they then had to turn around and pay premiums to the nearby farmers in order to maintain the volume.

Q. How much is in a jug? The example you used? A. 40 quarts.

MR. CARROLL: That is all.

EXAMINER HOLSTEIN: Any other questions?

Any further cross examination?

Mr. Smith, did you have a question?

That seems to be all.

Thank you, Mr. Newman.

THE WITNESS: I might say I don't have copies enough of the statement for all concerned, but I do have a few if anyone is particularly interested.

(Witness excused.)

* * *

[3750] WILLIAM J. NEWMAN

was called as a witness, and, having been previously sworn, was examined and testified as follows:

DIRECT TESTIMONY

THE WITNESS: The local Dairymen's Association has inserted five proposals and I will testify on those five proposals.

I line them up according to category and the first proposal is Proposal Number 22, our proposal to increase the nearby differential to the same extent that the transportation differential is lowered, if it is lowered.

In the evidence presented by Dr. Harry P. Young in LDCA's opposition to the elimination of the nearby differential, he pointed out these pertinent facts:

First, that prior to the Southeastern New England order, farmers regulated under state orders or the Fall River order with a dealer pool received $1.68 over the quoted Boston 201-210 mile zone blend price. Producers were paid for their milk on full use value. He also showed that in Philadelphia with a handler pool in 1961 the city plant price was 93 cents over country plant prices, showing that where milk is paid for at use value, the difference between country and city blend prices are almost one dollar apart.

Secondly, Dr. Young presented tables showing the [3751] contributions made by the nearby farmers to the distant producers, as far as use value of milk is concerned, in the Southeastern New England market.

Any reduction in the 54 cents transportation allowance is bound to increase the use value of nearby milk. LDCA contends this increase in use value of nearby milk should be reflected by an increase in the farm location differential.

That is the end of my testimony on that proposal Number 22.

EXAMINER HOLSTEIN: Perhaps we better ask if there are any questions on that proposal before we go to the next one. Any cross examination? Mr. Aplin?

CROSS EXAMINATION

By Mr. Aplin:

Q. Mr. Newman, if there is an increase in the use value, why should it not be paid by the dealers other than the other producers? A. It would be, Mr. Aplin, if we were operating under a dealer pool but under the marketwide pool the nearby farmers do not get the benefit of their increase use value and the only way it can be reflected to them is in an increase in the nearby differential. We feel that the nearby farmers went along with the marketwide pool with the expectation that their use value or true use value rather be reflected in the nearby differentials.

[3752] Q. If the city plant differential of 54 cents is reduced for example to 44 cents, do you think that the association can bargain with dealers who pay any more than the minimum price? Will they recognize that the milk has any value above the city plant class one price if it comes from nearby producers? A. I think that perhaps we will pick up some of this but we still feel that the increase use value should also be reflected in the nearby differential.

MR. APLIN: No more questions.

EXAMINER HOLSTEIN: Any further questions on this subject?

MR. COBB: Yes.

By Mr. Cobb:

Q. If the transportation differential is reduced would that not reflect the fact that nearby producers milk is as much more valuable as up country milk? A. I don't follow you wholly there.

(The question referred to was read by the reporter.)

THE WITNESS: Are you referring to relation to the value of nearby milk to up country milk?

MR. COBB: Yes.

THE WITNESS: Again are you saying if the transportation allowance is reduced that would reflect it cost less to bring up country milk and therefore the difference in values have been reduced that much?

[3753] By Mr. Cobb:

Q. That is right, sir. A. There is no question about it. If the evidence presented has shown that the 54 cents should be reduced, why then there is evidence that the Class I values of the nearby milk and up country milk are not as far apart as they are now.

Q. Well, if that is the case, then that would indicate that perhaps the nearby farm location differential should be reduced rather than increased, would it not? A. We–no, we don't agree with that at all because I think we have already shown that on the basis of the use value in the Southeastern market now that nearby milk is contributing–I don't have these figures but they were presented by Dr.

Young—a considerable amount of money per hundredweight to up country producers. I think in the up country market where 90 percent or better of the milk is used as Class I indicates that nearby milk has a much higher use value than it is receiving in the blend price even with the nearby differential they now receive.

Q. Well, in allocating milk at a city plant to Class I does not nearby producer milk receive priority of assignment to Class I ahead of up country milk? A. That may be true but it is used in Class I rather than up country milk.

Q. Well, an example— [3754] A. I don't think the up country or people of up country plants are transporting milk down to be used for Class II.

Q. Well, then if that is the case then if a city plant happened to have 50 percent of its milk from nearby producers and let's say 50 percent of its milk from up country producers, and let's say it had 75 percent Class I utilization with the exception of this 5 percent set aside, the up country producers then would have all of the Class II milk assigned to them, would they not? A. Yes, and the same thing would be true and a dealer pool set up. We don't feel that these market pools were set up to make it possible for distant milk to take the Class I sales that rightfully belong to the nearby farmers away from them. Again I think you have to consider the use value of the milk in determining the prices to the producers.

Q. Well, let's take the Philadelphia order then. Let's say, and I think you mentioned the Philadelphia order, an individual handler pool, let's say a handler under the Philadelphia order had a 75 percent Class I utilization. Would not all of the producers delivering to that handler regardless of whether they deliver to a city plant or to a country plant receive the same percentage Class I and Class II, receive the same blend price, would they not? A. That is true, that is right, but I think that Dr. Young showed in his testimony that in comparing all [3753] the plants in the Philadelphia market that the producers shipping to the city plants received somewhat around, I think it was 93 cents,

I forgot what the Philadelphia was, around a dollar more than the producers shipping to the distant plants and now we are talking about a market wide situation in these market pools in New England. We feel that the use value must be reflected to a large extent at least in the payment to the nearby farms or else the idea of market wide pools should be abandoned and we move to dealer pools.

MR. COBB: Thank you. That is all I have.

EXAMINER HOLSTEIN: Any further questions on this subject?

Mr. Geyer.

By Mr. Geyer:

Q. Mr. Newman, in a question from Mr. Cobb you said that if the Secretary decided to reduce the zone transportation differential would that not be an indication that Class I milk near the market or milk near the market was worth less, and I believe your answer was something to the effect that maybe it would. My question is, would it not be more correct to say that if someone convinced the Secretary that the 54 cents ought to be reduced that would not necessarily mean that it was sold, that the milk was actually worth less than at the market, would it? A. I think my full answer, Mr. Geyer, was that if the evidence showed that the Class I values between up country milk and city plant milk should be reduced, and I don't think there is any evidence to that extent yet, well, then that would indicate that perhaps the differential between the two values should be reduced.

MR. GEYER: Fine. I guess I didn't hear your answer correctly. That sounds fine to me. That is all I have.

EXAMINER HOLSTEIN: Any further questions on differentials?

Mr. Whitney.

By Mr. Whitney:

Q. With regard to the present circumstance when we have supply conditions of surplus rather than shortage, speaking of the change in the 54 cent differential times at this time, if we were in short supply and were reducing the 54 cent differen-

tial, would not the natural thing be to raise the price in the 21 zone? A. Well, of course I myself feel that many of the causes that are given for the possible need, I don't know whether it has been proven here or not, of reducing this 54 cents has resulted from savings in handling milk up country and I believe that those savings should be reflected in increased returns to the up country farmers.

Q. So in essence it is at this time not only the question of the change but a question of change in relation [3757] to surplus versus short supply conditions?

(The question referred to was read by the reporter.)

THE WITNESS: Well, Mr. Whitney, I have not testified in regard to this 54 cents. I just pointed out the one thing, that any reduction in 54 cents is bound to increase the use value of nearby milk and I feel that that should be reflected in increased nearby differentials.

MR. WHITNEY: That is all.

EXAMINER HOLSTEIN: Mr. Sykes.

By Mr. Sykes:

Q. Mr. Newman, is it a fair inference from your testimony that the use of the nearby location differential is a matter in which the higher Class I utilization of nearby milk can be reflected in a market wide pool? A. That is right, that is my contention.

Q. Would it also be fair to say that if there were no nearby location differential for that or if your organization had known that there would be none, would you feel that the situation would be more fairly handled market-wise by an individual handler pool? A. I feel myself that nearby farmers have no other alternative but to ask and demand for a handler pool if there is no nearby differential.

MR. SYKES: That is all I have.

EXAMINER HOLSTEIN: Mr. Tipton.

[3758] By Mr. Tipton:

Q. You do have the market wide pool in southeast now, is that correct? A. That is correct.

Q. And one of the items for consideration as to what should be any nearby farm location differentials is differentials

that are customary—customarily applied by handlers, is that not correct?

(The question referred to was read by the reporter.)

THE WITNESS: I guess I don't understand the question.

EXAMINER HOLSTEIN: Can you rephrase the question, Mr. Tipton?

MR. TIPTON: Yes.

By Mr. Tipton:

Q. Well, under a market wide pool one of the ways of adjusting the returns of the producers is by making some type of differential for differentials that are customarily applied by handlers, is that not correct? A. Are you referring to having handlers paying different prices for their milk?

Q. No, we have an—we have a market wide pool. A. I understand the market wide pool, the Class I price and Class II price. Now you are talking about differentials.

[3759] Let me just make a statement. We have a market wide pool. You have a total value of milk in that pool as determined by the class prices. Now one of the ways in adjusting the distribution of those proceeds from the pool is by giving recognition to differentials customarily applied by handlers is that not correct? A. What do you mean by customarily applied by handlers?

Q. Well, the differential customarily applied by handlers? A. For instance, name one.

Q. A differential that is applied by a handler over some other price some other handler applies. A. Well, my understanding was under our federal order system all handlers are paid the same price for their milk at the same location. I mean with the exception of this transportation allowance.

Q. They pay the same minimum price do they not? A. Well, minimum prices generally mean the same price, at least under today's conditions.

Q. Well, do you know of any differentials by handlers in the nearby area or in the city plant area in the southeast market that are customarily applying differentials? A. Yes, there are some sections in the southeastern market, we have handlers who pay premiums for milk reflected in actual price paid, quality premium or perhaps reduced [3760] trucking.

Q. But that premium that that handler is paying, he pays the payment of that premium—he bases the payment of that premium on the fact that he himself assumes or makes a determination that that milk has that value to it, is that right? A. Oh, no question about that. In the southeastern market we are in a fortunate position where the premiums are being paid at the end of the line and it reflects again perhaps that the Class I values of milk in that area are a little bit on the low side to some dealers, not to all dealers.

Q. Well, could not the possible solution to your proposal here be to write those premiums into the order to make up the difference for any reduction in the transportation differential rather than trying to increase the cost of up country producers? A. We are not increasing the cost of up country producers because we feel we are contributing more and more to up country producers all the time from nearby milk due to the fact that there is a difference between the use value of nearby milk and the blend price received by them which goes to the up country producers.

Q. Well, I will remove the segment from my question dealing with the increased cost to up country producers. [3761] A. What is that again?

EXAMINER HOLSTEIN: State your question without that qualification, Mr. Tipton.

By Mr. Tipton:

Q. My question is, if these premiums are there and are existent, then would not a possible solution to your proposal be to write these premiums into the order as payable by the handlers rather than increasing the nearby market location differentials? A. I don't know—I don't think it is possible to write them in the order for this one reason, that the same condition did not apply to all handlers buying nearby milk in the market. You try to write prices that reflect general conditions and then you are bound to have some variations on the plus side. You try to keep them as low as possible or else the price in my estimation is too low.

Q. In other words, if you were to write some differential in, some of the handlers would not be willing to pay that

differential? A. Some handlers would not have to pay it. Some of them do but I think that therefore you cannot set up a price that is going to apply to everybody.

Q. What I am saying though is if you were to determine that the average premium paid, and I am just using [3762] figures as an example, that the average premium paid was ten cents or something to this effect and so therefore you could convince the Secretary to write into the order some increase in the price the handlers must pay for their milk in some way, an equivalent to ten cents, now my question is are you saying then the handlers would probably not purchase that milk? A. I guess, Mr. Tipton, you are not fully familiar with the market in question, the southeastern market. That market was make up of a merger of three or four independent markets. The same condition does not apply to all sections of the southeastern market. In the New Bedford area, which is delegated at the end of the line, that is where the premiums are paid because they are down at the end of the line. You get them in this large section and very few premiums are paid, perhaps one or two dealers who demand special exceptionally high quality milk and are willing to pay a little bit extra. Therefore you cannot apply uniformly to the southeastern market a price schedule.

We tried seven cents over and that didn't work. It would have worked in the New Bedford area but it would not work in the other sections. I don't think you can do it in the price schedule, it has to be done on an individual area basis. That is, I think, one of the arguments against merging all these markets, you are going to have more [3763] problems along that line if you apply incorrect pricing to get milk to move where it belongs.

Q. I take it from that answer then that you would object to increasing the price that a handler must pay for his milk in some way to offset any reduction in transportation differential, is that correct? A. As far as regulations are concerned, yes.

Q. Then I didn't get the full reason as to why you oppose that. Is it because handlers would not pay any more? A. All

handlers must pay it. All handlers would not have to pay it, some would.

Q. What do you mean they would not have to? It is written into the order; if they were going to buy milk they would have to pay these, would they not? A. No, they could buy the milk of--out of the Boston Order or one of the other orders or order markets.

MR. TIPTON: I guess that is all.

EXAMINER HOLSTEIN: Mr. W. P. Smith.

By Mr. W. P. Smith:

Q. Mr. Newman, following the general thesis of the questioning of Mr. Whitney, if we could come to a condition while we were in a shortage situation rather than the present surplus situation, would it not be true that the actual cost of milk up country would in effect put this reduction, that part of this reduction in the transportation [3764] differential through the charging of premiums? A. Yes. I imagine that is true. I am not fully familiar and also I have not testified on the 54 cents except as it applies in its effect on the use value of nearby milk.

Q. Mr. Newman, you have been in the general southeast area now for a good many years and I would like to take you back through those years to shortage conditions. Is it not true that the handlers in the southeast area in order to obtain supplies of milk from either northern New England or New York have been charged sizeable premiums during shortage periods? A. Yes, that is true. My first job with the association in New Bedford was to allocate the nearby milk. The H. P. Hood Company came down and demanded its fair share of nearby milk and it was my job to allocate to all dealers in the New Bedford market their share of local milk, and it must have been because up country milk was quite extensively short.

Q. You mean to state for the record that H. P. Hood demanded a share of local milk? A. Well, I call it a demand, yes.

Q. And conditions must certainly have been different in those days than they are now? A. No, the Hood Company has been fair about buying local milk but in those days there was a definite cost advantage to having local milk.

[3765] Q. I meant supply conditions, Mr. Newman? A. Oh, yes.

Q. I didn't mean conditions in regard to the Hood Company, we both realize that their operations are very fair. A. That is right.

Q. Let me ask you this question. Following that experience which you are speaking of now, was it not true that many of the handlers in southeast New England are gravitated into the New York area because of sizeable premiums charged by northern New England handlers? A. I know that they went out to New York, I don't know what reason but I know that is where they went to buy their milk.

Q. Generally speaking, it would be because they could obtain their supplies at a lower price? A. It would seem so.

MR. W. P. SMITH: That is all.

EXAMINER HOLSTEIN: Any other questions?

Mr. Whitney.

By Mr. Whitney:

Q. In order to bring out what I hope will be a little clarification of the record here, these premiums which I have discussed in response to this past testimony was nothing that would be incorporated in any federal order provision, [3766] is that true? A. I didn't hear the question.

(The question referred to was read by the reporter.)

THE WITNESS: It is not incorporated in any federal order provision.

By Mr. Whitney:

Q. Would your proposal be the same if we were trying to amend the provisions under those conditions at this time? A. Would my proposal be the same if we were trying to amend those conditions?

EXAMINER HOLSTEIN: Provisions.

THE WITNESS: Which provisions are you referring to now?

By Mr. Whitney:

Q. These provisions in the current order, under those provisions, sir.

EXAMINER HOLSTEIN: Do you understand the question?

THE WITNESS: No.

EXAMINER HOLSTEIN: The witness does not understand the question. Can you rephrase it?

By Mr. Whitney:

Q. If the conditions that you described in the past were existent today would your proposal be the same? A. No. I think perhaps before I make the answer, you are referring to the time when milk was real short, [3767] is that what you refer to?

Q. Yes. A. No, I think that we would be asking for even a larger differential than we are asking for here.

Q. Now you mean you would want to increase the city plant differential? A. I thought you were talking about nearby differential. I am talking about nearby differentials. Is that what you are referring to? The 54 cent differential?

Q. Let me ask you what do you mean in your proposal by the words "by what ever reduction may be made in the zone price differential for the 21st zone." A. We are referring to the percentage reduction in the 54 cent transportation differential, that that same reduction be applied to the nearby farm location differential.

Q. Is it your concept that we should reduce the 54 cents in which I believe you— A. I want to emphasize many times I am not testifying on the reduction of the 54 cent differential in any way, shape or manner. I am just saying that if there is one that the reduction should be reflected in the increase in the nearby differential.

Q. I understand, but do you understand that when you deal with a differential you have two ends to this affair and I am asking you whether you chose the 21st zone or the [3768] city plants? A. Well, again I will say that I have not started either end but if I were it would be up country to raise that price. I don't know whether it is needed, it should be done or anything else, but I am just saying if it is done of course we would prefer to have it done up country.

Q. Then we do recognize there is no question about alternatives? A. Absolutely, I agree there are two alternatives.

Q. Now if this is to be a reduction of 14 cents for illustration purposes, under your proposal would the increase in

farm location differentials be 14 cents? A. Yes.

Q. Have you made any computation to indicate the difference that this would make when applied to the five separate orders? A. Nearby farmers would lose money if the reduction of 54 cents were made at the city level. We would hope to pick up a little bit of it in premiums.

Q. If your proposal was adopted, have you made any calculations with respect to between southeast and Boston for illustration? A. No, I have not.

Q. In the market where two thirds of the milk is nearby, a great–a flat rate of 14 cents would [3769] have considerably more effect on the resulting price to country producers would it not, than in the case of a market where one third of the milk was nearby? A. That is true.

MR. WHITNEY: That is all.

EXAMINER HOLSTEIN: Any further questions?

Mr. Sykes.

By Mr. Sykes:

Q. Just one question, Mr. Newman. In the time in the southeast area prior to the promulgation of the market wide pool order, were these higher prices that were being received by local producers the result of any computation of distant prices and then the adding of some amount to it or was this just the product of Class I utilization in a handler's plant and reflected in the prices received by the producer shipping to him? A. Prior to the southeast order nearby farmers got returns that reflected the use value of that milk and we feel again that the nearby differential despite the arguments that were given for discontinuance does reflect the added use value of nearby milk over distant milk and it should be continued.

Q. Let me ask one further question then. These handlers that were paying these prices as a result of higher utilization, they did not arrive at the final pay price [3770] to producers, did they, by any computation of any other price than the adding to it of a set figure like a differential? A. No, that is right.

MR. SYKES: That is all.

EXAMINER HOLSTEIN: Mr. Tipton.

By Mr. Tipton:

Q. I have two questions, one immediately following this line of questioning.

Do you mean to say that the handlers in southeast New England before federal regulations were put into effect, that they did not take a look and make any computation of alternative costs of their milk—alternative price I will say of milk of up country sources? A. Oh, I imagine to the extent that milk could be bought for what ever price it might be sold at in other areas they did look at that.

Q. So they did actually make two computations? A. But so far as their computations in their paying of the producers from whom they were buying their milk, that didn't enter into what they decided to pay producers. Whether they would buy the producers' milk, yes, but as far as what they would pay the producer, no.

Q. That was established under state regulations, that they bought it from producers and sold it in the state. That was established by state regulations? [3771] A. Yes.

Q. But they did look at other prices? A. Whether they would buy that milk or not, yes.

Q. Then I have one other question and that was you were talking a few minutes ago in regard to some questions asked by Mr. Smith about premiums paid during short periods. Were you not talking about handling allowances as synonymous there, is that what you are referring to really, a negotiated amount of what they would pay some handler for a volume of milk? A. Your differential of up country milk that they were buying?

Q. No, he asked some questions about premium. I was asking what premium you were referring to? A. I imagine it would be handling alone or having something like that.

Q. Then my next question is, do you know during this same period of time as to what the equivalent handling allowance, or what ever you want to call it, was in Boston, for example? A. No, I am not familiar with what they paid. I know they must have paid some handling allowance in order to continue the competition that existed at that time for nearby milk

because the prices set by both federal and state regulations were somewhat above Boston.

* * *

[2255] WILLIAM T. SMITH

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT TESTIMONY

THE WITNESS: I will try to read very slowly, in the event I say anything of earth-shaking proportions, so that you can get it.

Before I start, I would like to endorse the statement of Dr. Young.

EXAMINER HOLSTEIN: For the record, will you give the reporter your name?

THE WITNESS: My name is William T. Smith. I reside at 562 Reed Road, North Dartmouth, Massachusetts. I am here representing the members of the Fall River Milk Producers Association, Incorporated, 613 Palmer Street, Fall River, Massachusetts.

The association is primarily a bargaining cooperative, but has established some facilities for physically handling milk and performs a function as a balancing plant in the Southeast New England Federal milk marketing area.

It appears in this hearing everyone is going back to the beginning; so I felt constrained to start with my beginning.

I was born and raised on an 80 to 100 cow dairy farm in West Brookfield, Massachusetts. From my earliest recollection I have been in contact with the marketing of milk. My [2256] uncle, who operated the home farm in conjunction with my father, was president of an operating cooperative in the Worcester, Massachusetts, market, which organization was later sold to Mr. Cutting—more recently identified as the operator of Hillcrest Dairy, one of the larger handlers in the Worcester market. My father sold his interest in the home farm, and we moved to a smaller dairy-poultry farm in North Brookfield, Massachusetts, where I had complete charge of the milk production.

I matriculated at the Massachusetts Agricultural College, was graduated with a B.S. degree in animal husbandry from the Massachusetts State College, completed the residence requirements for an M.S. degree in agricultural economics, but did not at that time complete the required thesis.

More recently, I have reactivated my degree work, have taken several more courses, and am now engaged in writing a thesis on "Developing a Method of Pricing Milk Based on Its Total Solids Contents."

I taught vocational agriculture at two high schools in Massachusetts, and since 1941 have been employed as manager of the Fall River Milk Producers Association. I have also served as a district manager for New England Milk Producers Association, and helped organize and served as manager of the Southeastern Massachusetts Quality Milk Producers Association.

I own a herd of purebred Holsteins, one member of which just broke the Rhode Island state record for production [2257] in her class. I don't know whether that gives me any credit or not, but the cow did well.

The Fall River Milk Market has been under Federal regulation continuously since April of 1934. I have appeared at all the hearings concerning Fall River since 1941. I was one of the early proponents of expanded regulation in this area, and in 1955 submitted a proposal in this regard.

The Fall River Milk Producers Association was one of the proponents of the Southeastern New England Federal Order. It was my particular task at the promulgation hearings to develop evidence showing the interrelationship of distribution of milk in the proposed marketing area.

Now I would like to endorse the statements of Mr. Young, Mr. Geyer, and Mr. Newman, on behalf of the Fall River Milk Producers Association.

Statement in opposition to Proposals No. 1 and No. 2:

There have been many changes in the distribution pattern since the inception of the Southeast New England Federal Order,

and the members of the association which I represent are aware of the necessity for the change in regulations to keep step with the changes in the milk industry; however, it is our contention that none of the evidence submitted by the proponents of Proposals No. 1 and No. 2 would solve the problems that have been created by changes in distribution.

It has been shown by the statistics introduced by [2258] several witnesses that the problems as they exist today have not been created by the so-called nearby producers. The number of nearby producers in the Southeast pool has declined from a total of 1,447 in January of 1959 to 1,148 in August of 1962–a drop of 299 producers or 20.6 per cent.

Nearby production declined from 398,150,000 pounds in 1959 to 390,807,000 in 1961, or a drop of 18.4 per cent.

The blend price received by members of the Fall River Milk Producers Association declined from $6.19 per hundredweight in 1958 under the old Fall River Order No. 47, as amended, to $5.60 in 1962 under the Southeastern New England Federal Order. This decline amounts to 9.5 per cent, compared to a decline in the blend price for the Boston 200 to 210 mile zone from $4.53 in 1958 to $4.46 in 1962, or a drop of seven cents per hundredweight, or 1.5 per cent.

This presentation also ignores the fact that the basic Boston blend price climbed to $4.81 in 1959 (an increase of 27 cents over 1958) the first year of the operation of the Southeast Order.

Due to increasing production, the blend price in Boston has declined every year since 1959–$4.72 in 1960; $4.52 in 1961, and $4.46 in 1962. Should every producer in the nearby area cease producing milk, there would be a temporary increase in the basic blend price in Boston due to the temporary increase in Class I utilization of Boston milk, but nothing that has been [2259] advanced by the proponents of Proposals No. 1 and No. 2 would deal with the basic problem of an ever-increasing supply of milk.

Parenthetically, we intend to deal with this problem under another proposal, so we will not develop this point at this time.

The proponents of Proposals No. 1 and No. 2 have ignored the history of milk marketing and certain basic economic

facts of life by their assumption that nearby differentials are not based on real value of the milk involved. They show a complete ignorance of the facts when they attempt to rationalize the pattern of distribution for Boston with that of Southeastern New England.

Evidence has been introduced into this record to the fact that the five largest handlers in Boston receive approximately 70 per cent of the milk from producers. Even though the number of handlers in the Southeast New England marketing area has been declining even more rapidly than the number of nearby producers, there is no such disparity in size of handlers as that portrayed by the figures for Boston.

In 1961 the Fall River Milk Producers Association, Inc., sold milk or milk products to a total of 83 handlers of all sizes, ranging from the largest handler in New England to very small producer-handlers. In 1962 this number had declined to 63. However, the great bulk of milk in the Southeast marketing [2260] area is still distributed by medium sized handlers who depend on locally produced nearby milk for their supply.

Unless a handler has distribution of a minimum of 172,000 pounds of milk per week, it is not economically feasible for him to depend on distant sources of supply. The cost of transporting milk over distance in less than 500-can lots is prohibitive.

We have used the figure of 172,000, which represents a shipment of four 500-can tanks per week as a minimum. This minimum represents a distribution of approximately 12,000 quarts of milk on a daily basis. Even this figure would not put the handler in a preferred position in procuring an up-country supply. He could not economically maintain receiving facilities in the country for such a small amount of milk. It has already been testified to that the great bulk of the milk up-country is controlled by a very few individual handlers.

If Proposals No. 1 and No. 2 are adopted as they have been submitted by their proponents, the resulting blend prices to nearby producers will quickly force many producers out of business. Then the handlers who depend on locally produced

milk for their supply would be at the mercy of a very few handlers who control the supply of milk up-country. I doubt very much if the Secretary could find justification for such a situation

Mr. Beal stated that "our Northern New England dairy [2261] farmers cannot afford to subsidize their southern cousins." We, the "southern cousins," are not asking for a subsidy from anyone; however, our experience with the organization which he represents leads me to state that we "southern cousins" would be most happy to receive the figure for our milk that United Farmers and other Boston handlers who control the up-country supply have charged us for their milk when we have had to depend upon them.

The situation in this regard got so bad prior to the inception of the Southeastern New England Order that we were forced to go outside of New England for emergency supplies to meet the Class I requirements of the handlers who were depending on our association for their Class I needs.

One Boston handler informed me that he would rather separate his milk than to sell it to me at $1.00 per hundredweight over our Class I price, which at that time was 29 cents over the Boston Class I price.

I do not mean to imply by these remarks that that exact situation pertains at the present time, but my experiences over the past 22 years accentuate the belief that history has a way of repeating itself.

Even with conditions over the past three years being relatively good, in comparison to those which would accrue were Proposals No. 1 and No. 2, as presented by their proponents, to be adopted, nearby farmers have been going out of business [2262] Others have found that the only way they could stay in business was to adopt vertical integration and become producer-distributors.

I have made a change in the text, here.

If several of the proposals as they have been submitted were to be adopted, the cumulative effect on the blend price to nearby producers would be a drop of at least 60 cents per hundredweight, or approximately 10.7 per cent, when compared to 1962.

This would mean a total drop of over 20 per cent in the blend price to nearby producers, since the inception of the Southeastern New England Federal Order.

I would like to break in here and say that I arrived at that figure of 60 cents, shall we say, rather hurriedly. So I took the time to develop that figure just a little more thoroughly, in the event that some of the folks here might question my arithmetic.

I don't think it is possible to get an exact figure for the effect of these various proposals on the price to nearby farmers. But what I did was to take the city blend prices for 1931, and weight them by the volumes of milk in the five New England Federal orders. And by using that type of computation, the Southeast nearby or city price would have been reduced by 14 cents.

I think anyone who was familiar with the marketing of milk in New England would agree with me that the use of the city [2263] price is a little bit fictitious, in the sense that except for the so-called smaller orders, there is relatively small amounts of producer milk in the city zone.

So that if I were able to arrive at a correct Class I price, weighting the Class I price by volumes in the various zones, I am confident that the resulting price to producers would have been much less than that by the use of the city Class I price.

To the 14 cents, there is a proposal which would deduct from the present 54 cent location differential 17 cents, and making the location differential 37 cents, or a cut there of 17 cents.

And I have another figure of 23 cents, and for the life of me, at the moment I can't tell you how I arrived at it. But I came up with a total of 54 cents as the computed cut of price were all these proposals to be adopted. Perhaps in a minute I will remember what the 23 cents came from.

I would say that the Fall River Milk Producers Association recognizes that there is a disparity between the city delivered price and the 200 mile zone price, but we would solve that particular problem by raising the price in the 200 mile zone, rather than cutting the city delivered price.

Back on the statement: I have said that this would result in a reduction of 20 per cent in roughly six years to our nearby producers.

[2264] No economist in his right mind would advocate such a drastic drop in price for any group of milk producers. No administrator could justify such treatment. There would be no economic gain to any consumer. In fact, just the opposite would be true, because larger amounts of milk would have to be transported longer distances to meet the Class I demands of consumers in Southern New England.

In the words of Mr. Beal, it is uneconomic to transport a product which "contains about 88 per cent water." Soon the diseconomy would result in an increase in the Class I price or a greater cost of milk to the consumer.

This increase in cost to the consumer might come sooner rather than later if Proposal No. 1 were adopted with the resultant decrease in number of handlers in Southern New England.

I doubt very much if the Department is in a position to answer a charge that it is encouraging monopoly. Surely a situation where five handlers control over 70 per cent of the milk from producers is very realistically approaching a monopoly situation.

Federal orders should develop by evolution, rather than by revolution. Regardless of what one thinks of Darwin, the principles which he espoused are more palatable when applied to the field of milk pricing than those advocated by Karl Marx.

The members of the Fall River Milk Producers Association [2265] are realistic. They recognize that changes in the distribution of milk require changes in federal regulations. They are not happy that the change in the pooling of one country supply plant from one pool to another can effect so great a change in the blend price received by producers in the various pools involved.

When they advocated federal regulation in the Southeastern New England area, they envisioned a pool which would carry enough reserve supply so that it would be self-sustaining. They subscribed to the thesis that prices to producers in the

same supply areas should be equated as nearly as possible. They were not happy to sacrifice so great a cut in the price they received for their milk, but they found solace in the fact that a great quantity of milk which had formerly found its way into "their" market was not being regulated.

While they were not overjoyed at giving more than a million and a half dollars per year to their "up-country cousins," at least they no longer had to defend themselves against the charge of building a wall around "their" market. (More recently, walls have become very unpopular.)

Now at last milk could flow freely. Even the pooling requirements for both distributing and country supply plants we felt were on the low side. We fail to see how a distributing plant with less than 50 per cent Class I distribution in the marketing area or a supply plant with less than 30 per cent of [2266] Class I sales to plants in the marketing area can really be said to be associated with the market. Again we realize that such facts as the decision in the LeHigh Valley case could cause us to review our position.

That is the end of my statement on 1 and 2. I have a very brief statement on 3, which is very similar.

EXAMINER HOLSTEIN: Proposal 3 does not concern the Southeast New England Marketing Area at all.

THE WITNESS: No. Only in a general way. I have about a paragraph.

EXAMINER HOLSTEIN: All right. Go right ahead.

THE WITNESS: We have no objection to the adoption of Proposal No. 3, not because it does not directly affect the majority of our members (we have had members selling in both the Boston and Worcester marketing areas), but because we believe this is regulation by evolution rather than by revolution.

Springfield and Worcester are nearer than Fall River, New Bedford, and Providence to the Boston country supply area. The provisions of all three orders are identical. The majority of the producers are members of the same cooperative, and have established facilities for the handling of the reserve milk which is necessary to support the Class I sales in the marketing area.

The continuance of nearby location differentials as proposed in No. 3 should guarantee the continuance in production [2267] of nearby producers on whom many handlers in Springfield and Worcester depend for their supply. It should not be any more expensive to deliver supplemental milk to those cities from up-country than to Boston.

The transportation differential and country plant handling allowance should be adjusted so that locally produced milk of good quality should be as acceptable as up-country milk. We hold no brief for the construction of powder plants in Southern New England. If it is necessary to squeeze the water out of milk in New England, it should be done up-country.

Now, Mr. Hearing Examiner, there were some statements made that there were no premiums being paid for milk in the so-called nearby area, and that if we could bring proof of such premiums into this hearing, it would change the general thinking of the proponents who made that general statement. So over the weekend I have had my people prepare a list of handlers in the Southeast New England marketing area who we know are paying premiums of one kind or another.

Some of these premiums are a cut in trucking rates over what the rate would normally be, or what it was prior to the inception of the order. Some of them include payments for the installation of bulk tanks, and some of them are based on quality considerations such as low bacteria counts, and so forth.

And I have here a copy of the list of handlers, as submitted by the Administrator of Order No. 14, the Southeast [2268] New England marketing area, as of July 31, 1962.

There were at that time a total of 103 handlers. Some of these handlers represent two or three plants of the same organization. For example, United Farmers of New England, of Cambridge, New York, United Farmers of New England, at Middletown Spring, New York, United Farmers of New England at Shoreham, Vermont.

Since the publication of this list, two of the handlers have gone out of business, so there are to the best of our knowledge now just exactly 100 handlers in the Southeast New England area.

Of those handlers, we can produce information to the

effect that 39 were paying premiums of one kind or another. And I have broken the 39 down into the following categories. I have called those who have distribution of 10,000 quarts or more per day "large" for purposes of this information. For those who have distribution of from two to ten thousand quarts per day, "medium." And for those who have less than 2,000 quarts per day, "small."

There are 15 handlers who are paying premiums of one kind or another in the large category; 10,000 quarts or above. There are 14 handlers from the medium, 2,000 to 10,000, category, paying premiums, and 10 handlers paying premiums when their distribution is less than 2,000 quarts a day.

Now, there may be other handlers for whom we do not [2269] have this information. But I am going to say that at least half of the nearby milk is receiving a premium of one kind or another, which definitely refutes the statement that was made that nearby milk has no greater value than milk in the 200 mile zone.

And there was also a statement made that there are no processing facilities in the Southeast New England area. I am not here to maintain that the Fall River Milk Producers has a very extensive processing facility, but we have handled up to a thousand 40-quart cans of milk a day, and I have done a good part of it myself, and so I have prepared a statement, or a table, showing the monthly receipts of milk from producers in cans and in bulk.

The receipts of milk at our plant from handlers, milk which they would have no particular use for, is Class I. The receipts of milk from producer-handlers, total receipts by months, our Class I sales, Class II sales in such categories as ice cream manufacture or cheese manufacture, where we ship the milk from the plant at Fall River to some other plant; and then we have a term called "Class II disposal." That should be designated as "Disposal in our cheese manufacture."

I would like to present these for identification, sir.

EXAMINER HOLSTEIN: Are you offering the tabulation as an exhibit?

THE WITNESS: I am.

[2270] EXAMINER HOLSTEIN: The tabulation just described by Mr. Smith will be marked Exhibit 58 for identification.

(Exhibit No. 58 was marked for identification.)

THE WITNESS: That concludes my statement.

EXAMINER HOLSTEIN: Does that conclude your statement sir?

THE WITNESS: Yes, it does.

EXAMINER HOLSTEIN: It is now 12:30. We will recess for lunch at this time, and resume in this room at 1:45 p.m., at which time Mr. Smith will be available for cross examination.

(Whereupon, at 12:30 p.m., the hearing was recessed, to reconvene at 1:45 p.m., the same day.)

[2271] AFTERNOON SESSION

1:45 p.m.

EXAMINER HOLSTEIN: The hearing will please be in order.

Mr. Smith is available for cross examination on his direct testimony, including any questions as to the admissibility of Exhibit No. 58.

Whereupon,

W. T. SMITH

the witness on the stand at time of recess, resumed the stand and testified further as follows:

DIRECT TESTIMONY (Resumed)

THE WITNESS: Mr. Hearing Examiner, before we start the cross examination: I made a statement that I had computed a total of 54 cents as the possible reduction in price to our nearby producers if the various proposals which have been submitted were adopted; and I confessed to a lack of remembrance as to how I arrived at one figure.

The 23 cents is my estimation of the cost to our nearby producers of the elimination of the nearby location differential.

And I would like to say one more thing while I am talking.

I didn't go back quite far enough in my introduction of myself. My people came here with Roger Williams, way back [2272] in the time of the Indians. And on behalf of them and the people that have followed since, I would like to say that you have conducted this hearing in as fine a manner as any I have ever attended, sir.

EXAMINER HOLSTEIN: Thank you, sir. That caught me unawares.

Does that complete your statement?

THE WITNESS: Yes, it does.

EXAMINER HOLSTEIN: All right.

Mr. Smith is now available for cross examination, including his last statement.

Mr. Lent.

CROSS EXAMINATION

By Mr. Lent:

Q. Before I start to cross examine Mr. Smith, I would like to say that my mother was a DAR on account of participation of her family in the Connecticut Hill issue.

Mr. Smith, will you please describe the milk supply of the Southeast New England marketing area? A. Well, Mr. Lent, I think that there are enough exhibits of statistics in exhibits which have already been submitted to give a very excellent description of the supply of milk in the Southeast area.

At the time of promulgation, we estimated that roughly 80 per cent of the milk which would be distributed in the [2273] Southeast area would be what would be characterized as nearby milk, and probably some 20 per cent would be required to be shipped in from distant zones.

That proportion has increased on the distant milk to something like 25 per cent now, and the nearby milk, I would guess, is around 75 per cent of the total.

Q. How much of the milk is New England Federal order milk, and how much is under Federal order, and how much is unregulated milk? A. Again I will refer to the exhibits that are already in evidence. I think it would be repetitious for me to break down that information.

Q. Well, there is some in each category, is there not? A. Yes.

Q. And that is not producer milk under the Southeast order, as they use the word "producer" artistically in market order work, is it? A. That is correct.

MR. LENT: That is all.

By Mr. Tipton:

Q. As I recall, you stated that this proposal was in opposition to Proposals 1 and 2. There are other proposals for merging the Southeast New England order with other orders, so it is not in opposition to that type of merger? A. This particular statement was directed to Proposals [2274] 1 and 2. I think that it can be said that the organization that I represent is opposed to any mergers. The statement that I made in regard to Proposal No. 3 was pretty much my own position.

I think the answer was that we oppose mergers of any type.

Q. You made the statement that, "It is our contention that none of the evidence submitted by the proponents of Proposals No. 1 and No. 2 would solve the problems that have been created by changes in distribution."

My question is: What problems are you referring to? A. Well, I recognize that there have been changes in distribution. The Whiting Company, for example has closed their Rhode Island processing plant. The Hood Company closed their plant at East Bridgewater. The White Brothers plant, which was formerly shipping considerable amounts of milk into this marketing area, has ceased to exist, and has been combined into the Whiting empire.

There have been problems that have been created since the inception of the Southeast Order. We recognize that.

Q. Could you define for me more specifically what you mean by "problems"? What problems are you referring to?

A. I think I made the statement that it was my particular job, at the time of the promulgation hearings, to draw out a pattern of the interrelationship of distribution. It is my [2275] understanding that marketing area is delineated in large measure by the interrelationship of distribution, the competition between distributors, and it is definitely established that there has been a change in that pattern of distribution from what existed in 1958-1959.

Q. Later in your statement, you say, "Due to increase in production, the blend price in Boston has declined every year since 1959," and then you give some figures.

Is that solely and wholly–

Or let me ask you first: What do you mean by "increasing production"? A. Increase of milk in the Boston pool, without a correlating increase in Class I distribution, has resulted in a lower blend price to producers in the Boston pool.

Q. So you are talking in terms of receipts of milk in the Boston pool. Is that right? A. In comparison with distribution in Class I channels.

Q. You mentioned, here, that the basic blend price in the Boston market climbed to $4.81 in 1959. This has dropped. I guess that is the implication. I do not know whether you would say that or not, but it has dropped since 1959.

This reason for the drop has not been solely because of an increase in production of the producers that were delivering in 1959, has it? A. Well, in the first place, the increase which I commented [2276] upon in 1959 was due to the so-called "southern cousins" subsidizing the so-called "northern cousins." That was the money which came out of the fact that Southeastern New England became regulated, Southeastern New England and Connecticut. And of course a great deal of the milk which had come into these marketing areas as unregulated milk made efforts to get regulated. That is, the handlers of that milk got themselves regulated.

As to whether or not increases of production were solely responsible for the decrease in blend in the Boston pool, it cannot be said that it is solely, but it is definitely established that it is largely responsible for the decrease in the blended prices.

Q. Again you are talking about receipts rather than production, per se? A. Well, that is correct.

Q. Did you make a statement that unless a handler has distribution of a minimum quantity—and I think you used 172,000 pounds of milk per week—it is not economically feasible for him to depend upon distant sources of supply—in this case you were referring to producers up-country, were you not? A. Well, not necessarily. What I stated there was that in order to get a competitive price for his milk landed in the city, he had to avail himself of the cheapest methods of transportation; and the cheapest transportation into the area is in terms of 500 jug or can tank loads of milk. And unless you can [2277] buy milk in that volume, you can't avail yourself of the most reasonable price.

It is far more reasonable for a local handler to buy milk of local producers than to buy milk in less than that quantity. And there are very few handlers down here who are in a position to buy milk in that quantity.

Q. Then speaking of the handlers' alternative sources of supply, local milk in this case might have an additional value. Is that what you are saying? A. No question of it. It bothers me that they aren't smart enough to see it. They should be up here hollering their heads off.

Q. Then do you subscribe to the thesis that a handler should pay for milk according to its value? A. When you use the term "value," you are getting into pretty deep philosophical terms. There are all kinds of value, use value, place value, intrinsic values.

I don't think I want to answer as to paying for milk according to its value. If you will tell me what kind of value you are referring to, I will try to answer your question.

Q. Well, I am referring to the same kind of value that apparently Congress had in mind when they used the term in the Act.

EXAMINER HOLSTEIN: Well, we are about to get into a legal discussion. Mr. Smith asked you to tell him what your [2278] concept of value was. I think that is a fair statement. Now you are merely referring to what Congress said.

MR. TIPTON: Well, I will ask him to define for me his concept of value.

MR. CARROLL: May I have a clarification for a moment?

Does this question refer to value as contemplated under the Act, or does it refer to value which is fixed by the order? So that I can understand the answer.

EXAMINER HOLSTEIN: That appears to be the point of the question between Mr. Tipton and Mr. Smith.

MR. CARROLL: Could I have the question read back?

EXAMINER HOLSTEIN: The last question is the pending question. The other one was apparently withdrawn.

MR. CARROLL: What is the pending question?

EXAMINER HOLSTEIN: The pending question is from Mr. Tipton, as to what Mr. Smith's concept of value is.

MR. CARROLL: Without regard to the Act?

EXAMINER HOLSTEIN: That was the question.

THE WITNESS: In this particular question what I meant to connote was that in terms of the average handler in the Southeastern marketing area, nearby locally produced milk has a greater value to him than milk which is produced two or three hundred miles away and on which he cannot depend unless he pays rather an uneconomic price for it.

By Mr. Tipton:

[2279] Q. Well, if the order were to require a higher price payable by a handler and returnable by producers who supplied that milk from areas now specified as nearby areas, do you think handlers would continue to purchase that milk? A. There is no question but what some handlers would be forced to pay that additional price. It doesn't answer the question of equity as between handlers, but from the very nature of their operations, they would have to pay, and are now paying, a higher price.

Q. It would depend on his alternative sources of supply, would it not? A. That is right.

Q. Is it not possible for more than one handler to join in getting their supply of milk from up-country? In other words, one tanker to service two handlers? A. Yes.

Q. Is that being done now to any extent? A. I am not aware of it being done at the present moment. There have been times in the past when that type of operation was carried on. But it is not an economical way to handle milk and there are additional charges to the handlers involved from those that I have described in the receipt of one 500 gallon jug of milk on an additional basis.

Q. Additional charges to what? A. To make one, two, or three stops, you have to pay [2280] for the privilege.

Q. Additional charges of what? A. Over the charge for receiving one 500 jug tank load of milk on a regular basis.

Q. But not over his alternative cost of, say, having procured it from producers? A. Well, I don't know what the alternative cost would be. In the average handler's operations the same man who goes out to pick up the milk comes in and processes some of the milk. He makes a charge for trucking the milk, so that it becomes a pretty economical method of arriving at his supply.

Q. Do you know how many handlers under all five of the orders have plants up-country? A. I am not aware of the figure. It is in the record. It is in the exhibits which have already been submitted.

Q. And you would call this a very few number of handlers? Is that your connotation? A. I think the record shows that it is a relatively small number, and becoming smaller all the time.

Q. I know you added some additional comment and some additional description of how you arrived at the 60 cents per hundredweight, but I did not get any period of time you were referring to. What period of time are you referring to? A. What I did, Mr. Tipton, was to take the blend prices for the year 1961 and to weight them according to the total pounds [2281] of milk in the five New England pools, and then by dividing by a factor I arrived at weighted city Class I price of $5.55, as compared to a price in the Southeast New England pool of $5.69, or for the year 1961, we would have received 14 cents less on the city blend price.

Now, I made the statement that that could not be considered accurate, because it did not take into consideration the tremendous volumes of milk which would be assigned to Class I from up-country sources. If that were done, it would have lowered the blend considerably.

Q. So the figure that you are talking about for 1961, if the orders would have been merged, and the nearby farm location differentials deleted—the price would have been 60 cents less. Is that what you are saying? A. That is correct. And the additional change between the 200 mile zone—in other words, if the 54 cent differential were lowered to 37 cents. That further factor in there.

Q. You also make the statement that there would be no economic gain to any consumer; in fact, just the opposite would be true, because larger amounts of milk would be transported longer distances to meet Class I demands of consumers in Southern New England.

If the transportation differential reflects the cost of transporting milk, would this necessarily be true? A. I think you will agree with me, Mr. Tipton, that it [2282] is not economic. In fact, you made the statement, and Mr. Beal also made the statement, that it was not economic to haul a product which contains 88 per cent water over great distances.

And the further that product has to be hauled, the greater is the diseconomy. So that irrespective of the transportation allowance, it would result in a diseconomy, which again the consumer would have to pick up in the form of higher prices.

MR. TIPTON: I would like the record to state that I did not state that, or if I did, it was certainly not my intention. And the statement that Mr. Beal made was entirely related to a different matter.

This involved hauling milk to the market and having it manufactured into water extracted at the market. This was the diseconomy we were referring to, and not in this context that you are using it here.

I think that is all I have.

EXAMINER HOLSTEIN: Any further questions?

Mr. Adams.

By Mr. Adams:

Q. Mr. Smith, you stated the 54 cent differential had given you some trouble, as I understand it, in following the order, at Fall River. A. I didn't state that, Mr. Adams; but I think the marketing picture in Worcester and Springfield illustrates that there [2283] is a lack of balance in the present 54 cent differential that needs adjustment.

Q. Have you had any local producers out of the market? A. We have had local producers out of the market, and I have submitted some evidence to that effect. But to say they were out of a market because of the 54 cents is carrying it beyond any point that I would be willing to make. A good part of our producers are out because of handlers going out of business.

EXAMINER HOLSTEIN: Mr. Garelick.

By Mr. Garelick:

Q. In answer to a question from Mr. Lent, you mentioned there was some unregulated milk coming into the market? A. At the time of the inception of the Southeast Order; not now.

Q. I thought Mr. Lent was asking about current supplies. A. Well, I misunderstood him, then.

Q. If your answer was in regard to the supplies at the time of the promulgation hearing, then I withdraw my question.

EXAMINER HOLSTEIN: Any further questions? Mr. Carroll.

By Mr. Carroll:

Q. Your organization do I understand to be a cooperative association of farmers producing milk? A. That is correct.

[2284] Q. And in addition to the production of milk, what activities does your organization engage in? A. Well, we maintain a small balancing plant and provide a home for homeless producers. We have had, as I mentioned, sizeable quantities of milk, up to a thousand jugs of milk a day, this past year.

Our biggest problem came when Devine's Milk Laboratory was sold out to the Deary Brothers, and we had without very much notice as much as 350 jugs of milk from that one source alone per day.

Q. I take it, then, that aside from the small plant that you testified to, in the main you are engaged in selling raw milk in bulk to handlers in the Southeastern Order area? A. The great bulk of our milk, of the milk of our producers, moves directly from their farms to the farms of handlers regulated under the Southeastern Order.

Q. You mean plants, do you not? A. I am sorry. If I didn't say plants, that is what I meant.

Q. Now, what territory do your members in the main reside in? Are they in the immediate vicinity, or in the confines of this order, or do they serve in other markets as well? A. On occasion some of our members have sold their milk in Boston and in Worcester, but by and large, the membership delivers milk to handlers regulated under the Southeast Order.

[2285] Q. Now, I take it from your testimony that the majority of those handlers are either medium sized or small, according to your definition. A. Well, not only my definition, but I think that there are enough statistics in the hearing record already to indicate the truth of that statement, that they are relatively small, in terms of the giants that we know of in Boston and New York and Chicago and other markets.

Q. Are there any of those so-called giants in this market? A. I don't know as I should call them giants. There are some here, yes.

Q. And who are they? A. Well, of course, the giant of them all is the H. P. Hood Company. They are pretty much spread over New England.

Q. Now, I direct your attention to Exhibit No. 7, page 58. A. O.K.

Q. And I direct your attention to that part of the table which is captioned "Southeastern New England, Class I Sales on Routes in the Marketing Area, Per Cent of Total," and I direct your attention to that line in its entirety, whether it is for the three or the five largest handlers.

Now, for example, the City of Providence, Rhode Island: Would the concentration of the three largest handlers have a tendency to be greater than this, average, in the City of Providence, in your opinion? [2286] A. Well, let me ask you for clarification: You are referring now to page 58 of Exhibit No.

7, and in that column which says, "Class I Sales on Routes in the Marketing Area by the Three Largest Handlers," and then going down to Southeastern New England we find a figure of 33.5 per cent as being the figure referred to—is that the figure you are talking about?

Q. Yes. A. And your question is: Do I think the three largest handlers in Providence, Rhode Island, would have more sales than 33 per cent?

Q. Of that market. A. You are talking now about strictly the City of Providence?

Q. Yes. A. Yes, I would say that the three largest handlers in Providence would have considerably more than 33 per cent of the sales in the City of Providence.

Q. Would you say it would be more than 50 per cent? A. It would have to be purely a guess. My guess is that it would be in excess of 50 per cent.

Q. Now, did I understand from your testimony that you felt that the proposals would foster or tend to foster a monopoly? A. There isn't any question in my mind that if these proposals were adopted, it would have a very adverse effect upon [2287] local producers, and the first people who would feel the effect would be the handlers that received their milk from local producers. They would be forced to pay either more for their milk or go out of business.

Q. Now, it is a fact, is it not, that so-called "up-country" there is a tendency to shift the bulk tank deliveries of milk? A. The tendency to shift the bulk tank delivery is pretty universal throughout New England. It reached its peak in the State of Connecticut, and I think it can be said that Rhode Island was perhaps second, and Massachusetts third.

It is beginning to really speed up in the up-country area, yes.

Q. And does that trend have a tendency to centralize the control over supply in those areas, on the part of the handlers who are purchasing their milk in the up-country areas? A. Yes, I would say so.

Q. I direct your attention to Exhibit 7, page 50. You will note at the base of the exhibit, for size group No. 8, be-

tween 1960 and 1961 there was a decline in the size of plants in that category; and in the size grouping No. 1, there was a substantial increase. A. Yes.

Q. Now, is that in part due, in your opinion, to bulk tank operations? [2288] A. It could be.

Q. So that the plants themselves are tending to become larger? A. Yes.

Q. And more centralized? A. Yes.

Q. Now, then, directly or indirectly, the handlers who were presently servicing the Southeastern Order area, who are medium or small size—will they be required to purchase supplemental supplies from the handlers who are the primary sources of up-country milk? A. As the supply of milk locally produced goes down, and the information which has been introduced into this hearing record indicates that that has taken place, the handlers who are operating in the Southeast New England area will become more and more dependent upon outside supplies of milk; and if those outside supplies of milk are controlled by a relatively few handlers, which has been indicated by the record, then the answer is "Yes."

Q. And is it a fair conclusion from your testimony that you believe that it is possible to alter the Federal order marketing scheme so as to have a tendency to increase monopolistic tendencies within a market? A. I made the statement categorically that if the proposals which have been submitted, these various merger proposals, [2289] are adopted, there isn't any question but what it will tend to increase the trend toward monopoly.

Q. And I direct your attention to Title VII, Section 608C, subparagraph 18, of the Act, which authorizes the promulgation of these orders, and direct your attention to that part of the subsection which requires that orders be made in the "public interest."

And I ask you whether or not it is in the public interest, in your opinion, to foster such a trend. A. No.

EXAMINER HOLSTEIN: Is that all?

MR. CARROLL: That is all.

EXAMINER HOLSTEIN: Did you have something, Mr. Chernauskas?

MR. CHERNAUSKAS: Yes.

By Mr. Chernauskas:

Q. Relating to this concentration of supply in the up-country area, is it not true that the various cooperatives are amongst the largest handlers handling the up-country supply? A. I wish you would spell out what you mean by the various cooperatives. There are very, very many different types of cooperatives in the up-country.

Q. With regard to the source of supply in the up-country area, who handles the greatest quantity of milk, or who controls the greatest quantity of milk? The cooperatives, as a group, [2290] individually and as a group, or proprietary handlers? A. Well, if you are asking me the question individually, it is proprietary handlers. If you are asking me the question in combination, it would be the cooperatives.

EXAMINER HOLSTEIN: Does anyone else have any further questions?

If not, that is all

Thank you, Mr. Smith.

Mr. Chernauskas, did you have another one?

MR. CHERNAUSKAS: Yes.

By Mr. Chernauskas:

Q. You made reference to certain premiums which are being paid to nearby producers. Can you give us a little more detail on the types of premiums being paid? A. Yes. I will be glad to. I was perhaps a little vague in my presentation.

We call a premium anything which results in the handler paying more money than would be required under the provisions of the order, or in a producer receiving more than he had customarily received prior to a certain period of time.

And I group those premiums under three general headings. The No. 1 premium has been the great reduction in trucking rates, which has resulted in considerable increases in return to nearby producers.

No. 2 has been the premium which handlers have given [2291] to producers to encourage their installation of bulk tanks.

And No. 3 is the general qualification of premiums which are dependent upon certain quality considerations, such as bacteria count below a certain figure, and that sort of thing.

Q. Well, going to the trucking rate premium, does your co-op truck the milk? A. No. We contract with private truckers to truck the milk, both to us and out from our plant.

Q. And your organization pays this premium? A. No. The milk which is brought to our plant is paid for by the individual producer. But let me expand on that just a little bit.

For many, many years, under the Fall River Order, which was the oldest continuous order in the United States, the order recognized certain zone locations in the so-called nearby area, and there were certain established charges for hauling milk in these various locations.

These charges are no longer being adhered to, and milk is being hauled for much less money than was true even five years ago, in spite of what everybody tells us are increased costs of transportation.

Q. Well, by your statement with regard to premiums, do you mean to imply that these premiums are paid only to nearby producers, and not to up-country producers? [2292] A. I was referring to the premiums being received by nearby producers. But of course, I have no way of knowing from my own knowledge as regards premiums to up-country producers. I think the record shows that some cooperatives pay a so-called 13th check. There is no question but what there are premiums of various kinds being paid in the up-country area, too.

MR. CHERNAUSKAS: That is all.

EXAMINER HOLSTEIN: Mr. Garelick.

By Mr. Garelick:

Q. You spelled out three different types of premium costs that reduce trucking rates. Trucking was mentioned as

one. Would you say that is the biggest factor, trucking rate? A. I think it is the most widespread type of premium being paid in the nearby area, and probably results in more money being received by nearby producers. The bulk tank premium, I have to confess, is being withdrawn in various instances, so that it is not now as convenient as this lower trucking or additional premium for delivered.

Q. This lower trucking rate which you classified as a premium—is this mostly as between handlers today, or as between truck rates, say in 1958, against trucking rates today? A. I think it applies both ways. Certain handlers, in order to attract a supply of milk, even today, are going out to the nearby sources of supply, in other words, the nearby producers, and offering considerations for trucking.

[2293] The thing that I answered Mr. Chernauskas on was that we are getting milk brought to our plant for considerably less money today than was true five years ago.

Q. But there is no premium involved there, is there, when you hire trucking? A. I consider it a premium if the producer is getting the same service for less money than he formerly had to pay, yes.

Q. You do not think it is a reduction in cost; you think it is a premium? A. There isn't any question but what the bulk handling of milk has resulted in certain savings, but I think that there are monies being passed along which are even greater than can be shown to be savings in cost. In fact, the truckers tell us that their costs are increasing.

Q. Now, you said you thought part of it was a comparison from 1958 to the present. Do you think that is the biggest change, from 1958 to the present, rather than as between handlers at the present? In other words, when the Federal order on trucking rates went down, that was the biggest change, was it not? A. Yes. And of course the point that I tried to bring out was that we have seen a very decided change in the supply picture from 1958 to the present time.

Q. We are just talking about trucking. A. I think that the change in supply has been a considerable factor. I mean by that the fact that premiums still exist [2294] in the face of increased supplies indicates to me that there is greater value for the locally produced milk.

Q. All right. Now, these differences in trucking rates—are most of these differences in trucking rates as between handlers hauling their own milk, and haulers, or as between one handler hauling his own milk and another handler hauling his own milk? A. Well, the greatest difference, of course, would be as between handlers hauling their own milk, which becomes a part of the picture of their operations, and the traditional hauling rates that the individual hauler charged.

Q. So that in other words what you are saying is that some producers have found that by shifting to a handler who hauls his own milk, they get a greater return than by shifting to a handler who hires an outside hauler to haul milk? A. That is correct.

* * *

HORACE B. WILDES

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT TESTIMONY

THE WITNESS: I am Horace Wildes, a dairy farmer of Little Compton, Rhode Island, and Dairy Committee chairman of the Rhode Island Farm Bureau Federation, an organization of some 175 Rhode Island farmers actively interested in securing conditions favorable to a sound agricultural economy in our state and in our country.

We do not intend to encroach upon the specialized field of the milk producer cooperatives; but our membership, which includes members of all the locally active producer co-ops, as well as some independent producers, does have some fundamental opinions which I would like to present relative to proposals in this hearing.

1. Proposals for Consolidation of Orders:

Farm Bureau's approval of marketing orders is limited by the condition that they be kept small enough to be fully responsive to the needs and interests of the areas so regulated.

In the New England area there is undoubtedly some feeling of unity, as reflected in the close interrelationship of the five New England orders; however, we believe that there are, [2305] and will continue to be areas with sufficiently different economic characteristics to require individual treatment. We are also concerned that under present referendum procedures, the producers of any one area cannot be assured full opportunity to determine whether or not to consolidate with other areas.

Rhode Island Farm Bureau Federation therefore is opposed to Section I in general, and to Proposals Nos. 1, 2, and 4 in particular.

EXAMINER HOLSTEIN: By Section I, Mr. Wildes, you mean that entire category which has to do with mergers?

THE WITNESS: That is right.

EXAMINER HOLSTEIN: Go right ahead.

THE WITNESS: That is our statement on consolidation. If I may go on, now–

EXAMINER HOLSTEIN: Go right ahead, sir.

THE WITNESS: 2. Proposal No. 52 and others to delete or reduce nearby farm location differentials:

Rhode Island Farm Bureau Federation is opposed to any reduction in the level of farm location differentials. Furthermore, in the event of a reduction of zone differentials, we support Proposal No. 22, to assure that the effective differential price shall remain unchanged.

In support of this position, may I point out that ample evidence is available and has been presented in these hearings (testimony of the Local Dairymen's Cooperative [2306] Association, by Harry P. Young, Table I(a) and (b)).

I think that has an exhibit number, but I don't remember what it is.

MR. CHERNAUSKAS: 46 is the table.

THE WITNESS: Exhibit 46.

I will start that sentence again and leave out that reference.

In support of this position, may I point out that ample evidence is available and has been presented in these hearings to show that the present level of differentials has not caused prices either high enough for local producers to stimulate their production, or low enough for distant producers to prevent their production from increasing.

In direct opposition to Proposal No. 52, I feel impelled to support the principle of location differentials. It is unfortunate that their economic justification is so often unrecognized. Mr. S. W. Beal in his testimony states flatly "there is no sound economic justification for nearby market differentials"; yet one of the early lessons in any study of economics describes the natural pattern of production that surrounds any urban area.

In this pattern the products that are most perishable, bulky, or otherwise difficult to transport assume positions nearest to the center. This is the economic rule which makes the establishment of a dairy farm within the relatively expensive [2307] nearby areas a sound investment.

But milk is a peculiar product in that it is marketed in two forms: fluid, and manufactured into various condensed products. So while some farmers are locating close to the center, with an eye to the fluid market, others adapt themselves to distant, less expensive areas to produce mainly for a manufactured milk market.

If we then introduce a marketwide pool allowing all these farmers to share equal portions of fluid and manufactured markets, this whole long established pattern will be thrown into chaos unless a system of differentials is used to normalize the situation.

Nearby farms which can supply fluid milk as economically as any, could not survive on an unadjusted blend. They would have to be abandoned, to the detriment of the local economy, and their operators relocated in the artificially more attractive distant areas.

Contrary to the opinion that appears to be popular in Northern New England, we do not feel that the nearby farm location differentials can properly be regarded as a burden to

anyone. Rather, they are designed to prevent a serious dislocation of production which would cause inefficiency and ultimate higher costs to consumers.

EXAMINER HOLSTEIN: Cross examination? Are there any questions?

[2308] Mr. Tipton?

CROSS EXAMINATION

By Mr. Tipton:

Q. You made the statement that nearby farms who can supply milk as economically as anywhere would have to go out of business, or something to that effect. Will you help me get the statement correct, so that we can go from there? A. I think I said, "Nearby farms which can supply fluid milk as economically as any could not survive on an unadjusted blend."

Q. What do you mean, then, that they could not survive? What would happen? A. I mean on a blend that was not adjusted by the use of location differentials, the nearby farmers would lose the natural economic advantage of being close to the market, where they would expect to have a high percentage of Class I sales. And under those conditions, being in a more expensive area than more distant places, they naturally would be uncompetitive.

Q. Then what do you mean, that they may supply milk as economically as anyone? If they cannot supply milk at a blend price, then how can they supply it as economically as anyone? A. I think some of the testimony that has been given here has shown that locally supplied milk does have greater value, especially to the small handlers, than distant milk has.

Q. Are you through? [2309] A. I feel that to some extent explains what I mean.

Q. And I take it you think that that producer should receive that additional value? A. Yes.

Q. Do you think that handler should pay for that additional value, the handler that got the additional value? A. If we are still talking about these farm location differentials, as I understand it the handler does not have any additional costs on that arrangement.

Q. Yes, but if it has additional value, do you not think the handler should pay for that value? A. I don't know that I follow you too deeply into this business.

EXAMINER HOLSTEIN: You mean you do not understand the question?

If you do not, Mr. Tipton will rephrase it.

THE WITNESS: Well, as I said in my introduction, I don't pretend to go into the specialized field of the cooperatives. I try to answer questions as well as I can, but I admit that I can get in too deep.

I think my point here is, if I haven't made it clear, that I feel that local producers are efficient to the extent that they can supply milk competitively, as long as they are assured a high percentage of Class I sales, which is the condition under which they went into business, and on which they [2310] naturally assume to remain in business.

But if we establish a marketwide pool and then do not use location differentials to assure them this high percentage of Class I sales, or at least an equivalent of that, their natural economic situation is completely destroyed.

I don't know if that answers your question, but I tried to make myself clear.

By Mr. Tipton:

Q. I think you have the contention that local milk has additional value and the producers that produce that milk should receive some benefit because of this additional value.

Now, my question to you is: Who should pay for that additional value? Should the handler pay for that additional value, the handler that used that additional supply of milk and obtained the additional supply of milk for it? A. Not necessarily. The point is that milk in the distant areas is considered to have a lower value, in that it is normal for it to be kept there except as it is needed in the urban areas.

It is normal for it to be kept in the distant areas until it has been converted into manufactured form for more economical transportation. And if we used the marketwide blend without differentials, the tendency would be for that milk to come in and displace local milk, causing that to be manufac-

tured, which to me seems an entirely abnormal economic situation.

[2311] Q. Why would deletion of nearby farm differential locations encourage up-country milk to come to the market? A. Because it would give them a higher price for it.

Q. It would give who a higher price? A. It would give the distant producers a higher price, as I understand it.

Q. What existing producers? A. Distant producers.

Q. Distant. I am sorry.

That would encourage them to ship it to the market, because they got a higher price? A. Yes.

MR. TIPTON: I think that is all.

EXAMINER HOLSTEIN: Any other questions?

Mr. W. T. Smith.

By Mr. W. T. Smith:

Q. Mr. Wildes, you used the words in your original presentation about nearby farmers being as economically able to produce milk as those in some distant areas. I think you corrected the effect of that statement later on in your discussion with Mr. Tipton. But would you not agree that if you had changed the wording to "as efficient," substituting "efficient" for "economic," it might have carried more meaning in the sense that you tried to present it? A. Yes, I could accept that.

They would have to be abandoned, to the detriment of the local economy, and their operators relocated in the artificially more attractive distant areas.

Contrary to the opinion that appears to be popular in Northern New England, we do not feel that the nearby farm location differentials can properly be regarded as a burden to anyone. Rather, they are designed to prevent a serious dislocation of production which would cause inefficiency and ultimate higher costs to consumers.

* * *

(2312) Q. Now, one more question, Mr. Wildes.

I think it might help the record if you gave us just a little more of a picture of your own operations. I

think the record could well show that you represent perhaps one of the best operated dairy farms, certainly in my experience, and I have been on at least a thousand farms in New England.

But my question is this: In your experience, is it not true that farmers in the nearby areas, those whom we call nearby producers, have built their operations, especially in terms of finance, around a blend price which they would expect to receive with the operation of nearby differentials? A. Yes. That would be the only condition under which I could see that a man would want to establish a dairy farm in this area. There would be no other way to justify the additional expense of being close to the market.

Q. I was referring more, Mr. Wildes, to those who have already established in the nearby area. They have built their operation on the present expected price; is that not so? A. Yes.

Q. And if those prices were to be depressed by the elimination of such factors as nearby differentials, by the pooling of great volumes of milk into one pool, what effect would that have on the individual farmers located in the nearby area? A. Well, I think I have pointed out that they could not survive if the situation changed that much. Many of us now are (2313) at a point where even our own operation, which he describes as exceptionally good, is reaching the point under present conditions where we may have to decide whether to stay in or not. It is not as profitable as it was a few years ago.

Q. All right, Mr. Wildes. Assuming that you and all the other nearby farmers were to go out of the production of milk, what effect would that have on the handlers in the nearby areas who are dependent on that supply? A. I think the previous testimony has brought out, and I would go along with it, certainly, that especially the smaller handlers would find it very difficult to replace that supply of milk. Of course, in our own case, we sell

to Hood, which probably wouldn't bother them so much. I don't know so much about that, really.

Q. Let's carry this one step further.

All the farmers have gone out of business, and nearly all the small dealers have gone out of business. What effect would that have on the consumers in these Southern New England cities? A. Well, you certainly would reduce the competitive situation in the market if you eliminated all the small producers. And generally speaking, when you reduce competition, you are tending to an unfavorable condition to the consumer.

Q. In what sense, Mr. Wildes? A. Well, we think of competition as the main element in (2314) our economy which keeps costs down to the consumer. So that as you eliminate it, of course, we would expect costs to go up.

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[1770] DR. HARRY P. YOUNG

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT TESTIMONY

THE WITNESS: My name is Harry P. Young. I am an economist for the local Dairymen's Cooperative Association, Incorporated, whose address is 511 Westminster Street, Providence, Rhode Island.

With respect to my qualifications, I came to New England on September 1st, 1915, and I have been intimately associated either as a participant or a well informed observer of all of the New England milk marketing programs that have been under way since that time.

In my participation in the New England milk marketing discussions and controversy, I would like to note that it started in Vermont, in opposition to a prevailing doctrine in that state [1771] that fluid milk in the southern New England markets ought to be priced in relation to its value for manufacture in-

to butter and cheese, that my position was that that was an absolutely absurd theory and completely unsatisfactory and unworkable, and that that still is my opinion as to any future proposals of that nature.

Proposals No. 1 and No. 2 would consolidate Southeast with the other four orders in New England. Proposal No. 4 would consolidate Boston, Worcester, and Southeast into a single order.

The Local Dairymen's Cooperative Association is opposed to the merging of Southern New England with any other order. Specifically, we appear in opposition to proposals Nos. 1, 2, and 4. We are opposed on principle to the consolidation of independent markets into larger ones unless the evidence is clear that producers in each of the affected markets approve of the mergers; and unless it can be shown that there is a need for the merger from the standpoint of economic benefits to all producers involved.

There is nothing in the functioning or operation of the Southeast order that indicates a need for merging with other orders. The need just does not exist.

We have prepared a number of tables which illustrate the functioning of the Southeast Order from its inception, on January 1, 1959, to date.

[1772] We have offered these tables as an exhibit. They are offered in connection with the testimony we now offer, and with other testimony we shall present on other proposals.

I would like to go over these tables, indicating briefly their purpose.

Table I(a) gives the number of producers by states, 1959 to 1961. The number of producers are shown for the nearby area that is in the farm location differential zones in Connecticut, Massachusetts, and Rhode Island. The total nearby producers, you will note, has gone down from 1,447 to an average of 1,229 in 1961, a decline of 218, and in August, 1962, the number was 1,148, or a total decline for the entire period of 299.

For New Hampshire and New York, the number of producers has increased by 12, and for Vermont by 206. The

total producers has increased from 703 in 1929 to 921 in 1961, an increase of 218; and in August, 1962, the number was 1,074, indicating a further increase of 153 producers.

Table I(b) gives the receipts from producers in thousands of pounds. Going down to the third line across, the total nearby receipts has declined from 398 million during 1959 to 390 million in 1961, a decline of 7,343,000 pounds, and a further decline in nine months of 1962 of 1,283,000.

* * *

[1780] For the five year period, 1954 to 1958 inclusive, the percentage Class I utilization of milk from Rhode Island registered producers, shown in Column 1 of Table 8, Exhibit 46, averaged 91.3 per cent. The average for May was 85.6 per cent, and for November 93.8 per cent.

The next column shows the average utilization for the SNE order of all milk delivered from farms to city plants for the years 1959 to 1961. The deliveries and utilization at city plants include that of over 100 producers from distant areas whose milk was bulk tank trucked from farms to city plants.

The data by months for each year are shown in Tables 6(a), (b), (c) and (d). The average for the first nine months in 1962 is 89.6 per cent. This compares with the average for the first nine months, 1959 to 1961, of 90.7 per cent.

The effect of the imbalance can be seen by a study of Table 10, Exhibit 46. The most striking comparison is between Springfield and Southeast.

For the year 1931 Southeast had a weighted average Class I utilization of 73.4, Springfield had 71.8 per cent.

Nevertheless, with the same class prices and with difference of only 1.6 per cent Class I utilization, Southeast had an average blend price of $5.67. Springfield had an average of $5.37, or 30 cents less.

[1781] The disparity comes about because Springfield has no country plants. The 71.8 per cent utilization is the average at city plants as well as the market average. Southeast, on the other hand, has had a number of country plants. In 1961 (see Table 6(c), Exhibit 46), SNE had an average Class I utilization of deliveries at city plants of 90.5 per cent, and of

deliveries at country plants of 37.8 per cent. The 73.4 per cent Class I is the weighted average for deliveries at both city and country plants.

At the bottom of the page in Table 10, Exhibit 46, this same condition is shown from April to September in 1962 for Southeastern New England, as compared to Connecticut, Worcester, and Springfield.

Southeast had an average Class I utilization of 71.4, Connecticut had 77.2 per cent Class I, Worcester 72.0, and Springfield 72.8. With the lowest Class I utilization, Southeastern New England had an average blend price of $5.46, which was 10 cents higher than Connecticut, 12 cents higher than Worcester, and 26 cents higher than Springfield.

The difference came about due to an average utilization in Class I at city plants in Southeast of 89 per cent, and at country plants of 36.7 per cent.

The payment of farm location differentials on large quantities of nearby milk reduced blend prices to producers. It was the purpose of LDCA to limit the farm location differential [1782] area to include only those producers whose milk had been delivered directly to city plants, primarily for Class I use, and over an extended period of time. We expected there would be country plants and bulk tank deliveries into Southeast. This process results in Class II milk being manufactured in country plants where volume plants and other factors reduce costs. This process as we see it, unless it is abused by attempts to manipulate prices, is economically sound and to the financial advantage of the producers involved.

I have no criticism or objection to the manner in which this problem was handled in Connecticut, Worcester, or Springfield, however, Southeast has maintained a balance in the supply and the demand for nearby milk. And I would like to add: which suits us better.

Southeast should carry the surplus associated with Class I sales, but we object to having added to our burdens the Class II volumes in the farm location differential areas of Connecticut, Worcester, and Springfield.

* * *

[1788] Q. * * * What producers were you saying got the Boston blend price plus the 25 cents or 20 cents? A. The producers delivering to unregulated plants supplying Southeastern New England.

Q. Then part of the million dollars was because of the [1789] fact that the Boston pool was carrying supplies that were necessary and a part of the Rhode Island market prior to the promulgation of the Southeastern New England order. Is that correct? A. Do you mean the Rhode Island or the Southeastern market?

Q. Well, I am talking about the area, say, that is now included under the Southeastern Order. A. The answer is yes.

* * *

[1793] Q. I did not understand: What causes the nearby milk to be manufactured as opposed to manufacturing upcountry? A. Could you clear that up a little? What do you mean, what causes the nearby milk to be manufactured?

Q. Well, I did not understand what your philosophy was about. [1794] A. Our philosophy is that the nearby milk in the interest of all producers in the pool should be used as Class I milk to the fullest extent possible. And if it is not being used as Class I milk, then in our philosophy it is either being overpriced in relation to the price of the distant milk, or there is too much of it. Now, I don't want to quarrel with Mr. Ken Geyer or anyone else on that, but that is our philosophy.

MR. TIPTON: Thank you. I did not understand what your philosophy was.

I think that is all I have now. Thank you.

* * *

(2321)

The Witness: I would like to state that I have a few copies of my statement reserved for those who have not previously had one.

Examiner Holstein: Your statement is already in evidence as Exhibit 45, is it not, sir? Is that what you are referring to now? This is the statement that you

(2322) gave, part of which you gave, during our Boston session; is that correct?

The Witness: Yes, 45 and 46.

Examiner Holstein: 46 being the tabulation?

The Witness: The statement on Exhibit 45 begins on page 9 and is headed "Delete Nearby Farm Location Differentials."

Before going into this statement, I would like to put into the record the manner in which the payments to producers, to nearby producers, prior to federal regulation, was carried on. And the statement that I make covers the period from somewhere after 1916 until the advent of federal regulation in New England markets.

Nearby producers were given ratings, and for these ratings they were paid the Class I price, with the stipulation if there were enough Class I sales to cover the ratings of nearby milk.

Now, for instance, in the larger dealers that purchased both nearby and differential milk, the nearby producers were paid the Class I price for their rated milk, and that amount of Class I was deducted from the total Class I sales, and the remainder was used in the computation of the Class I price paid up country, or far distant producers.

Under this system the dealer did not pay the cost of the nearby location differentials. That was entirely a producer (2323) set-up, just as it has been under federal orders.

Proposal No. 1, paragraph 1, would substantially alter and reduce the farm location differential payments.

Proposal No. 52 apparently comes as an afterthought to delete the payments from all five New England orders entirely.

Our opposition to these proposals will be presented from the facts of the case in the Southeastern New England market. This evidence, however, applies in principle equally well for all the New England orders.

These payments are provided for in Sections 1014.62 (a) and (b) of the New England order.

Subsection (a) provides for payments of a 46-cent differential to producers whose farms are located in Rhode Island, roughly east of the Connecticut River, and in Massachusetts east of the western boundary of Worcester County and south of the Massachusetts Turnpike.

Subsection (b) provides for a secondary area, and for a 23-cent differential. However, very little milk has ever been delivered from this area. The area described in Section 1014.63(a) covers the location of nearby farms from which historically milk has been delivered to city plants in the Southeast milk marketing area.

Milk from the farms in this area has always been paid for at prices higher than prices for distant milk. The excess amounts are considerably above the cost of transportation and (2324) handling from the distant points to the market.

In the early history of the markets, nearby producers who were members of the NEMPA were given bases, and for these bases they were paid the Class I price.

The difference between the Class I and the net price from 1920 to 1930 averaged 53 cents; and for the entire period from 1920 to 1936 the average difference was 51 cents. Transportation and handling allowances were about 63 cents, or a total differential of $1.20 to $1.25.

Mr. Bronson, at a public hearing in 1936, testified total differentials in one location of $1.04 over a ten-year period; from 1923 to 1932, and to $1.16 at another location from 1927 through 1930.

At the same hearing, John H. Carton, Jr., representing the nearby milk producers' association gave evidence of an individual producer member who had received over the lean year period of 1920 to 1930 from $1.20 to $1.30 cents over the NEMPA average price in the 191 to 200-mile zone.

Average prices paid producers from 1954 to 1958 for milk from the nearby areas delivered to Southeast city plants are shown in Table 2, Exhibit 46.

Average prices paid to Boston producers in the 201 to 210 mile zone are also shown.

The differences for the five-year period immediately preceding the advent of the Southeast New England order, 1954 (2325) to 1956, inclusive, averaged $1.66 cents.

The differences between prices paid Rhode Island and Boston producers are shown in Table 11, Exhibit 46. The average difference is $1.69. A number of unregulated or non-pool plants from distant areas in Vermont and New York prior to 1959 were regular shippers to Southeast markets.

Prices paid to producers at these plants were usually about 20 cents over prices at neighboring Boston plants. Therefore, producers whose milk was shipped to Providence or other markets in Southeast New England had received about $1.48 less than producers in the nearby areas. These distant producers were willing or even eager shippers at substantially lower prices than prices received by nearby producers.

This practice continued right up to the advent of the Southeast New England order on January 1st, 1959.

The proposed order provisions on farm location differentials and zone prices varied somewhat. Those finally incorporated provided for total price differentials of $1.07. That was made up of zone differentials of 61 cents in the 21-cent zone over the Boston price and a nearby farm location differential of 46 cents.

It promptly became apparent that the extra 7 cents differential over the 41 in other New England orders was tending to reduce rather than enhance Southeast's producer blend prices. The differential was reduced to $1.00 on September (2326) 1st, 1960. The reduction has tended to decrease the relative blended price in Southeast New England Order. (See Table 4, Exhibit 46.)

It is apparent that nearby producers, under natural marketing conditions, when no artificial price regulations were in effect, have received substantial price differentials over prices paid distant producers. These differentials are in excess of the costs of transportation and handling of the distant milk. They are in part due to the fact that smaller distributors cannot afford the very high cost per unit of milk in volumes of less than about 35,000 pounds, or about 16,000 quarts.

Distant milk is for the practical purposes of comparative costs unavailable to them.

It was necessary to work out provisions in the SNE order that would provide for equitable sharing of the proceeds from the sales of Class I milk with distant unregulated producers whose milk sales in SNE had been at prices substantially less than Class I prices established by State Control Boards.

There are several methods of accomplishing this purpose. One would have been a handler pool order where the nearby producer price advantage is automatic as is the case in the Philadelphia Order (See Table 9, Ex. 46.).

During the year 1961, producers delivering to about 32 city plants subject to the Philadelphia handler pool order were entitled to blend prices which averaged $.93 over the (2327) 205-215-mile zone average price for about 15 country plants.

Transportation zones account for 48 cents. Therefore, the farm location differential was 45 cents.

There are proposals in this hearing notice to provide exemptions to milk of dealer-owned farms. An exemption for nearby producers of the 1500 quarts per day proposed for producer-distributors could be used with equal equity or legality.

There is of course always the opportunity open to local producers to peddle one's own milk if the Chinese bandits became too aggressive.

We have given all these ideas careful consideration, and we are in full support of equalization provisions, including the nearby farm location differential provisions now in the order.

The statement has been made that the farm location differentials should be deleted because the distant milk is worth just as much as the nearby milk. That misconception warrants examination. The value of milk in these Federal order markets is determined on the basis of its proportionate utilization in Class I and Class II computed at the class prices in the appropriate zone location.

Tables 12 (a) (b) (c) and (d) in Ex. 46 gives the computed use value of milk delivered to city plants from the farm location differential area, and also the use value of milk delivered to country plants adjusted to the 21st Zone. The (2328) blend prices appear in Columns 3 and 7.

The price reduction from the use value of the nearby milk appears in Column 4 and the price addition above the use value at country plants appears in Column 3.

The percentage of Class I deliveries at city plants is given in Column 1, and the percentage at country plants is given in Column 5.

The date in the tables are by months for the years 1959 through 1962 to date. The use values of milk are computed as the sum of the Class I and Class II values at the city and in the 21st Zone.

The differences between the use values and the blend prices represent the price reductions in the nearby milk use values and the price addition to the use values for the distant milk.

It would appear that the resultant prices have been insufficient to maintain the volume of production in the nearby areas and sufficient to slightly simulate volume in distant areas. However, none of this statement is to be interpreted as dissatisfaction with these equalization provisions. The process of some sharing of the proceeds of

Class I sales that have been supplied by nearby producers results in the manufacture of necessary surplus in country plants where it economically belongs. The whole operation of the SNE order, including the equalization procedures, has been successful and it is worthy (2329) of continuation.

We earnestly urge that Southeast be continued as a separate order for the reasons outlined in this testimony.

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(2330) This part designated by the appellants.

Cross Examination by Mr. Tipton:

Q. Dr. Young, on page No. 10, the fourth full paragraph, beginning "Milk from farms in this area has always been paid for at prices higher than prices for distant milk," would you, under present marketing conditions, anticipate the handler's buying milk from producers in the nearby farm location differentials would pay more for their supply of milk than the equivalent quality and quantity and what have you from up-country sources? A. I wouldn't expect it, no. I might add they never have.

Q. Handlers in the nearby areas have never paid more for a supply of milk than up-country producers? A. That is the general rule.

Q. On Page No. 12, you make the statement that distant milk is for the practical purposes of comparative cost unavailable to them. Do you mean to say that up-country milk delivered to their plant is more costly than milk which they purchase (2331) from nearby producers? A. Yes.

Q. And to what extent, or how? To what extent is it more costly? A. It is more costly because of high transportation costs if the milk is procured in medium-sized or small loads, and it is more costly because of handling

charges and other charges if they buy it from cooperative associations in small lots.

Q. I know of several instances in which small handlers have grouped together and purchased supplies. Maybe one truck comes in from up-country and delivers the supply to several handlers. You contend that this is more costly than if they purchased it direct from producers? A. Are you testifying now, or asking the questions?

Q. I am asking the question. A. I don't know of any such instances.

Q. Well, what is the cost of producing these small quantities of milk directly from producers, then? A. There is evidence in this hearing record that the cost of transporting milk is usually by trip, and that is my experience in getting milk transported. And the cost per hundred pounds, then, is in inverse ratio to the size of the load.

Q. Were you through? I am sorry. (2332) A. Yes.

Q. But before you can say that the mere distant supply is more costly, we must have what is their present cost of procuring the nearby supply; right. A. Well, their present cost of procuring the nearby supply is the Class I price under the order, as a rule.

Q. Oh, they have no cost of producer procurement, inspection, health regulations, all of these type things that go with procuring the supply; is that right? A. I presume there is, of course, some cost of receiving milk. How much, I don't know.

Q. Well, do you have any idea of what the cost over the order price is of buying milk up-country in these lots that you are talking about? A. I have heard quotations on temporary supplies or variable supplies up as high as 75 cents to $1 over the Class I price delivered in the market. Now, regular production is less than that. I don't think I have at hand any accurate information on what is being paid by dealers who purchased milk regularly from up-country sources. Whatever the mark-

up is, it is usually a matter of confidential relationship between buyer and seller. But I am sure that it is more than the cost of inspection and this, that, and the other on nearby milk.

Q. If you had two dealers that were located in relatively close proximity to each other, which I assume we have in Rhode (2333) and these dealers could use on a regular basis a tankload of milk, and this tankload of milk were delivered to these two dealers, half of it to one dealer and half of it to another dealer, would you expect the cost of that milk to be far in excess of the cost of locally procured milk?

Q. That, of course, would have to depend on the circumstances and the volumes and the methods of agreement on how the milk is to be delivered. And I might offer a conjecture, it would be that relationships would be very apt to become strained in the course of operating that kind of a business. But you have no figures as to what you think the procurement costs might be? A. No, I don't.

Q. It could very well be equal; is that right? A. What is that?

Q. It could very well be equal; is that right? A. I don't think so, no, sir.

Q. If you haven't done any figures or compiled any figures on this, then how can you make the statement that distant milk is for practical purposes unavailable? A. Well, we have the example before us of a dealer who had a supply of milk that he was picking up in the vicinity of Brookfield, Vermont. And before the order, he had a very unique trucking arrangement that reduced his cost of milk very substantially. And after the order came into effect, this (2334) dealer dropped that supply and started acquiring a local supply paying a premium over the local price for that local supply. And he made no secret of the fact that it was going to cost him less money; that he was doing this in order to acquire his supply of milk at lower cost.

Another dealer acquiring milk from a number of producers in eastern New York, in Delaware County, continued this for some time, but then abandoned that procedure in favor of the purchase of local milk.

And those, I think, are excellent examples of the lower costs in general to small or medium-sized dealers who purchase milk directly from local farmers.

Q. When was this dealer paying this premium that you were talking about? A. The order started in 1959. Now, this is purely out of memory. I believe that he began to acquire a supply of local milk early in 1960, or the latter part of 1959.

Q. Could not this premium have been in order to obtain a supply of milk, getting it away from some other handler? A. Well, it was get the milk that he didn't have. Some other handler was buying it; that is true.

Q. Did he continue paying it, and does he pay it now? A. I think it has faded out.

Q. Beg pardon? A. I think it has faded out largely. I don't think (2335) that the premiums are continuing, at least not at the same rate.

Q. This handler would have been acting on the basis of the alternative cost; is that right? His alternative of buying it from local producers or buying it up-country. A. I think so, yes.

Q. And he made the determination that the local producer milk had some additional value for it, and they would be compensated for it. A. Well, if you buy milk, you will find out a man doesn't shift unless he is given a little incentive. And I would say that he felt that in order to avoid the high costs up-country, it was worth while spending a little money down here to make sure he got a supply.

* * *

DAVID CLARKE, JR.
Economist

[2524] REDIRECT TESTIMONY

THE WITNESS: Farm Location Differentials:

Arguments involving the justification for farm location differentials have received substantial attention. In general, there appears to be a consensus regarding the origin of these added payments in excess of the uniform pool price and without regard to transportation cost differences which are made to producers located near the market.

These differentials developed in response to the need for some compensation to induce "local" producers to accept the provisions and consequences of marketwide pooling. From the standpoint of this discussion, however, there is no need to raise questions as to whether such payments are justified, or whether their absolute magnitudes–i.e., 46 cents per hundredweight and 23 cents per hundredweight, respectively–are the correct differentials to be used. It is sufficient to note here that they have become "deeply embedded" in federal order markets in the Northeast.

Farm location differentials–sometimes called [2525] "nearby differentials"–are paid out of the pool and are applicable to the uniform price to producers located relatively near the market area, and reflect factors other than the cost of transportation.

In the notice of recommended decision which followed the promulgation hearings in Connecticut, the following statements were made:

"Milk received from the nearby area has long represented the major part of the total Connecticut supply. The differentials adopted recognize the higher percentage of the milk near to the market than of milk in the most distant zones which customarily has been used for fluid purposes. Nearby producers have been able to obtain a price higher, in relation to more distant producers, than can be accounted for by the advantage in the cost of transportation to market. This his-

torical pattern of pricing has been typical in the markets of this region, and market differentials of this type have been adopted in the nearby regulated markets. The differentials adopted will reflect more representative values with respect to the milk of both nearby and distant producers since the nearby producers will share in the higher priced Class I market to an extent somewhat greater than otherwise would be the case under market-wide pooling.

"In addition, the use of a nearby differential will assist in providing appropriate price alignments for direct-[2526] delivery producers, which will permit Connecticut handlers to continue to compete in the purchase of milk on reasonable terms with dealers in adjacent markets. The amounts of such differentials are very similar to those employed in other New England Federal Order Markets and are in reasonable alignment with the schedule employed in the New York-New Jersey market. Such differentials were proposed and generally supported by both producers and handlers at the hearing. *Their employment will tend to promote orderly marketing in the milkshed.*" (Emphasis added.)

In a later section of the aforementioned recommended decision, the following statement is made:

"The nearby differentials effective in markets surrounding Connecticut make rather certain the necessity of some differential payment in Connecticut at this time, whether determined by the bargaining process or pursuant to the regulation. Although in some markets nearby differential payments are arrived at through bargaining, the proximity to Connecticut of other markets where fixed differentials are in effect suggest that a more uniform price situation among competing markets will prevail and orderly marketing promoted if such differentials for Connecticut producers are determined on similar terms through the order."

Certainly, if such historical pricing patterns, supported by the need for orderly marketing, were overriding [2527] considerations as recently as the latter part of 1958, similar conditions can be expected to prevail today.

Two important aspects of this problem require consideration. First, to the extent that these added payments to local

producers have been used to "compensate" nearby dairymen for the loss of Class I sales through marketwide pooling, the decision to enter into such pooling arrangement is irreversible. Once the decision has been made to pool milk utilization on a marketwide basis, and, as a result, to require nearby producers to "share" the market for Class I sales, it is difficult, if not impossible, to return to the situation which existed prior to the time the decision was made.

Second, to the extent that nearby producers have enjoyed enhanced returns through these devices, these returns—like those resulting from favorable location, patent rights, "good will," tariff protection, and similar devices—become capitalized in the cost structure of the firms or industries so advantaged. In the process of this capitalization procedure, the effects of the enhanced returns rapidly become dissipated. In either of the above two circumstances, the removal or substantial reduction in farm location differentials will have the effect of penalizing participating producers by adversely affecting price-cost relationships. This is, in fact, tantamount to depriving such farmers of property rights without due process [2528] of law.

In considering the need for, or desirability of, substantial changes in the farm location differential, it is also necessary to take into account the differential effect this will have in the different markets involved. In Connecticut, for example, a high proportion of the total fluid milk receipts is received from farms located within the area in which the 46 cent differential is applicable. As a result of this fact, the complete removal of the farm location differential would have a very minor effect upon prices received by producers within the normal milkshed for that market, at least in the short run.

On the other hand, the removal of this order provision (or a substantial reduction in its magnitude) would effectively increase by a substantial amount the net returns to farmers located near or beyond the current milkshed limits.

The situation in the Boston milkshed is quite different. Here, a relatively minor amount of the total receipts for the Boston order receive the nearby differential. Therefore, the

suspension or reduction of this differential in the Boston market would result in a rather substantial reduction in the net returns to nearby producers, but would have only a minor influence upon returns to producers serving the Boston milkshed from relatively distant sources.

Under these circumstances, it seems apparent that any [2529] major alteration of the farm location differentials would have the effect of a substantial alteration in intermarket price alignment in the peripheral areas where markets compete for supplies. Such adjustments would not only apply to the competing New England markets but, probably more importantly, from the standpoint of the Connecticut market, would substantially alter the relationships between that market and New York-New Jersey.

Such alterations could be expected to yield profound impacts upon the orientation, organization, structure, institutional arrangements, and economic well-being of the dairy industry in the entire Northeast.

In Connecticut, for example, such an alteration in order provisions would result in the substantial increase in the attractiveness of the Connecticut market to distant producers. As a consequence of the expected increased flow into the Connecticut pool, returns to producers currently within the farm location differential zone would undoubtedly be drastically reduced and would have the effect of forcing some dairymen out of business, while leading others to curtail production in favor of alternative farm enterprises.

The net impact of this proposed change could very well be to alter the nature of the Connecticut milkshed from one involving direct shipments to a country-plant type of operation.

It is impossible to predict the impact of the combination [2530] of the proposals for market consolidation and a reduction in the farm location differentials without having advance knowledge of the specific terms of the consolidated order that might be effectuated, but there is little reason to expect any substantial salutory effects from such a change, at least over the long run, in terms of either prices received by producers or in prices paid by consumers.

In conclusion, I would like to summarize and restate the propositions which seem to me to be important in the consideration of the proposals to merge existing orders and to reduce the farm location differentials—particularly in their possible effects upon the present Connecticut and Southeastern New England markets.

It is my basic contention that, during the period of time they have been under federal regulation, these orders have operated well as separate markets which are highly integrated with the other New England order areas. Further, I believe they can be expected to continue to operate successfully as separate markets, at least in the immediate future.

Conditions within the fluid milk industry constantly change —it is highly dynamic in nature. Changes that have occurred in recent years have had the effect of reducing the "local" nature of the market forces affecting this industry. This means that individual geographic areas can no longer be treated independently (if, in fact, they ever could).

[2531] Interdependencies and interrelationships among markets tied through economic forces must be recognized and provision made for appropriate alignment of prices and other order terms. Among the New England markets in particular, these interrelationships have been well recognized and provided for through the process of the integration of order prices and classification provisions.

On the other hand, complete merger could have the effect of making uniform all of the provisions of the order, including those in which specific differences have been designed to meet more closely the needs arising from different conditions affecting the marketing of milk in different localities.

On the other hand, the merger of some of the current New England orders may be desirable, if not now, at some point in the future. It is suggested, however, that before this is done, substantial study ought to be given to the re-examination of the objectives of large regional orders.

In my opinion, this cannot properly nor adequately be done by the mere extension of the terms of a particular order to a much broader geographic area. As stated earlier, Congress

specified and the Market Orders Division has applied a market-by-market approach to milk price regulation. Should this approach be changed, program goals and the provisions by which these goals may best be achieved must, of necessity, be re-evaluated.

[2532] Available evidence indicates that the farm location differentials are largely a matter of "equity rights." As such, they involve "negotiation." In each case, the points to be negotiated are the size of the differential, and the area to which it is to be applied. These depend upon local conditions, and it is not likely that these conditions will be the same for every area.

Furthermore, once a farm location differential becomes a part of the price structure, the benefits that accrue become embedded in the cost structure. To remove or reduce the amount of such differentials would penalize participating producers by adversely affecting price-cost relationships. In many ways, this involves depriving such farmers of property rights without due process of law.

[2533] EXAMINER HOLSTEIN: Does that complete your presentation?

THE WITNESS: That completes it.

EXAMINER HOLSTEIN: During the next recess, will those persons who previously indicated their desire to testify during the Hartford session—and I am referring to those persons who wish to testify and who do not plan to take any other session of the hearing either in any of the other cities or in Boston—will they during the next recess come up here and give me their names, so that we can make arrangements and hear their testimony before tomorrow evening?

We will have a ten minute recess at this time.

(Short recess)

EXAMINER HOLSTEIN: The hearing will please be in order.

Let's come to order, please.

Dr. Clark has concluded his testimony on nearby differentials. Are there any questions in cross examination?

Mr. Lent.

Take the microphone, Mr. Lent.

MR. LENT: I do not think I need it, but I will take it.

RECROSS EXAMINATION

By Mr. Lent:

Q. Dr. Clark, on page 22 of Exhibit 61, you said, at the bottom of the first main paragraph: "This is in fact tanta mount [2534] to depriving certain farmers of property righ without due process of law."

And then at the end of your statement, on page 25, yo said, "In many ways this involves depriving such farmers of property rights without due process of law."

Do you mean the same thing by those two statements? A Yes, I do. The meaning would be the same as if we eliminate the words "in many ways."

Q. Would you agree that federal orders do not specify market rights of producers as such? A. Yes, generally I woul agree to that.

Q. Would you agree that such market rights as are created however, are not absolute or permanent? A. Yes, I think generally I would subscribe to that.

Q. Would you agree that the conception of rights must be of reappraisal continually in the light of changing conditions? A. Yes.

Q. And now on page 23 of Exhibit 61, just past the middle of the page, there is the sentence about changing the nearby farm location differential in the Connecticut order "would substantially alter the relationships between that market and New York-New Jersey."

Does that jibe with your statement that the conception of rights must be reappraised continuously in the light of changing conditions? In other words, would not that last [2535] statement apply to New York-New Jersey, as well? A. Obviously it would, yes.

Q. So that you did not mean in the quotation, page 23 of Exhibit 61, that the New York-New Jersey pricing arrangements were necessarily unchangeable, did you? A. No.

MR. LENT: I would like to say for the record that in connection with these questions I am not taking a position on behalf of anybody as to changing the New York-New Jersey nearby farm location differentials.

EXAMINER HOLSTEIN: The record will so show.

Is that all, Mr. Lent?

MR. LENT: That is all.

EXAMINER HOLSTEIN: Any further questions?

Mr. Tipton:

By Mr. Tipton:

Q. Dr. Clark, on page 20 of your statement, you make the statement that these differentials developed in response to the need for some compensation to induce local producers to accept the provisions and consequences of marketwide pooling.

You are familiar, or I assume you are familiar, with the fact that we have marketwide pooling in the New England orders, are you not? A. Yes.

Q. And you are familiar with the Act which sets up the [2536] basis for marketwide pooling provisions. Is that not correct? A. Familiar with the Act that sets up the basis for marketwide pooling?

Q. Yes, sir. A. You are referring to the Agricultural Marketing Agreement Act?

Q. Yes, sir. A. Yes.

Q. And under the section which deals with marketwide pooling, it specifies, or it says, "Providing for payment to all producers and associations of all producers delivering to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered."

And then it makes some specification for adjustments. One of the specifications for adjustments then is for differentials customarily applied by handlers.

In your estimation, are any of the 46 cent and 23 cent differentials being pretty customarily applied by handlers? A. Are at the present time being customarily applied by handlers?

Q. Yes, sir. A. To the best of my knowledge, they are not, at the present time.

Q. Are there not two types of pooling available under [2537] the Act, one being marketwide pooling and one being individual handler pooling? A. That is correct.

Q. And is there any provision that you are aware of that would allow for individual handler pooling in conjunction with marketwide pooling? A. I am not sure that I know what you mean by individual handler pooling in conjunction with marketwide pooling.

Q. Well, in your statement, you say that producers are to accept the responsibilities and consequences of marketwide pooling.

Maybe I should ask you what you are implying by that statement.

MR. GEYER: Mr. Hearing Master, if I could interrupt for just a moment: Mr. Tipton read a part of the Act which apparently suited his purpose. But would it not be a much more orderly procedure if he would read to the witness the other subject in either case, to adjustments, and read the other adjustment other than the one that he mentioned?

EXAMINER HOLSTEIN: Well, no, I am not sure that it would. I think it would be up to the witness to explain any other qualification to his answer, if there are such. Mr. Tipton can refer to only one requirement, if he wishes; but the witness is free to refer to any other appropriate provision which he thinks should apply to his answer.

[2538] By Mr. Tipton:

Q. My last question was: What do you imply by the last portion of the sentence that I was referring to, on page 20? A. And the question is the one that reads: "These differentials developed in response to the need for some compensation to induce local producers to accept the provisions and consequences of marketwide pooling."

Well, what I had in mind here is that apparently historically producers located relatively close to the market had generally enjoyed a higher percentage of Class I utilization, either because of favorable relationships with local distributors or

alternatively because of the fact that they were possibly in a better position to go into a producer-dealer type of operation and thereby increase their Class I utilization.

Now, this particular advantage, under marketwide pooling—they were more or less asked to relinquish, and as a compensation for relinquishing this advantage, the differentials were encompassed in the order. This is my understanding of the material quoted at the hearing.

Q. On page 21 you make some quotations from a recommended decision. Was there any change in the decision from the recommended decision? A. I can't answer that. I am aware of the fact that it was brought to my attention this morning that it would have been [2539] more proper to have used the notice of final decision. However, the copy of the materials that were available to me in my office happened to be the recommended decision. I am not aware that any changes or any substantial changes were made in the wording of these particular sections.

Q. Have you read the entire decision? A. I believe it is a fair statement to say I have read the entire notice of recommended decision.

Q. It is not a fact that one of the reasons for promulgating the Connecticut order was because the local supplies of milk were being replaced by unregulated cheaper priced milk? A. That is my understanding, yes.

Q. In the recommended decision that you have quoted, here is a statement, "The differentials adopted will reflect more representative values with respect to milk of both nearby and distant producers," et cetera.

In what sense did you use the word "values" or what does the word "values" in this usage connote to you? A. Well, first of all, I would like to clarify that I did not use this in any sense. This is a quotation.

Q. Yes, but I am now asking you: What does this connote to you? A. Well, values generally mean worth.

Q. Then the way this is used, it would connote to you that the nearby milk has more worth than the up-country milk? [2540] A. This would carry that connotation.

Q. If it does have more worth, then would not this worth generally be expected to be reflected in the price? A. I would expect that would logically follow, yes.

Q. And if it were to be reflected in the price, then would not the person who received this value or worth normally be expected to compensate for the additional value and worth which he received? A. I think, Mr. Tipton, you are trying to put words in my mouth. I did not say that this milk had any greater worth. But I was merely making the quotation.

Q. Well, would you say that it does not? A. I don't know that I can make that judgment. It would depend upon what other differences might be involved. If the milk were of generally higher quality, more regularly available, more dependable, or in some other sense, I suppose it would have a greater value or worth.

Q. But you are generally familiar with present marketing conditions. And do you think that these conditions give nearby milk additional value or worth over up-country supplies of milk? A. Well, I would suspect that would depend upon local conditions. If I had a milk supply, for example, that I couldn't get to during some parts of the year, because of weather conditions or something of this type, I suppose local milk would have a greater worth.

[2541] Q. But you do not know whether any of those conditions exist here or not? A. Well, I understand that certain parts of Northern New England are hard to get into, and sometimes the electricity breaks down, and sometimes the roads are impassable, and so on, which would have a bearing on this.

Q. Are not these same type conditions applicable, or could they not be applicable, to nearby supplies of milk, as well as up-country milk? A. Presumably they could, yes.

Q. On page 22 of your statement, you indicate that the nearby producers have enjoyed enhanced returns through certain devices, namely, the nearby differentials. And then you go on to say that these have been capitalized into the cost structure of the firm or industries so advantaged.

Is an example of one of the things you were saying that they are capitalized into the land values, to be specific? A.

Well, in my experience in milk marketing, they would be capitalized into many types of things. Land values is one of the things. And on the basis of the mechanics to which the farm location differential operates, I would expect that these enhanced returns would be capitalized into land values.

On the other hand, capitalization takes place in many respects—I have seen these values become capitalized into the value of a cow in certain of our West Coast markets, for example.

[2542] Q. Do you know of any of the stated purposes of the Act that would have the direct purpose of perpetuating these capitalizations? A. Of perpetuating the capitalizations?

Q. Yes. A. Not necessarily.

Q. I think you mentioned earlier, either in cross examination or possibly in your statement, something concerning the fact that you were in favor of free flows of milk and free marketing conditions, speaking very generally, but I think this was one of the things that you did state along this line at least.

In this connection, then, is it not true that the nearby farm location differentials or the impact of the nearby farm location differentials have the impact of preventing some of the normal free flow that would exist without the nearby farm location differentials? A. I expect there is an opportunity to use these for this type purpose. However, as I indicated in the statement, the question of the justification of the differentials, whether they are right or wrong, is I think entirely aside from the issue being considered right now.

The fact that they are here and have become capitalized in the price structure and have been used to align prices at the peripheral areas between competing markets—and to the extent that it has enhanced returns to certain producers—these [2543] values have become capitalized.

I don't mean to imply that as a result of this these capitalized values need to be continued in perpetuity, but if you manipulate them, you are dealing with differential equities.

Q. At the bottom of page 22, you make the statement: "As a result of this fact, the complete removal of the farm lo-

cation differential would have a very minor effect." And you were speaking of the Connecticut market.

If it would not have any impact, or I guess I cannot say "any," because there is a slight difference, very slight, then what is the purpose of the nearby farm location differential in the Connecticut market? A. The only purpose that I am aware of are in those sections which I quoted.

Q. Let me ask you what sections you were quoting that you are referring to now. A. I am talking about the quotes from the recommended decisions, which appear on page 21.

Q. Could you point out more specifically in 21, or page 21, in those quotes, what you are referring to? A. Well, to the best of my knowledge, it is pretty much the entirety.

Q. Well, since there would not be any change, or very little change, in the relationship of the price of nearby milk to additional markets, whether the Connecticut market had a [2544] nearby farm location differential or whether it did not have a nearby farm location differential, then I suppose you are referring to the relationship between up-country prices. Is that right? A. Yes, that is correct. And you will note that the quote that you made also contains the qualifying phrase, "at least in the short run."

Q. If the nearby farm location differential provisions were deleted from the Connecticut market, then the up-country price would be higher than what it is now, obviously. A. That is correct.

Q. Then would not this give an opportunity of a more full opportunity for your attraction theory to fully operate? A. I think that is entirely a matter of how the net FOB farm prices are aligned in these peripheral areas, which is a function of the class prices, the utilization, and the farm location differentials.

Q. Well, if the nearby farm location differentials were deleted from the Connecticut market, and the nearby farm location differentials were deleted from the Boston market, then the Connecticut up-country price would exceed the Boston price by a considerable amount. Is that not correct? A. In those peripheral areas, I would expect that is correct, if I followed your reasoning.

Q. And if the Connecticut price exceeds the Boston price [2545] in up-country areas, then it would give an incentive for milk to move to the Connecticut market. Is that not correct? A. That is correct, yes.

Q. But whether the milk actually moved to the Connecticut market or was pooled in the Connecticut market might depend upon other factors, such as the availability of outlets and so forth to become qualified under the Connecticut market. Is that not true? A. I suspect.

Q. On page 22 you speak of the effect of penalizing participating producers' relationships.

What producers are you talking about? A. The ones who currently received the farm location differential.

Q. Does it not have just the same effect in reverse, that it presently penalizes up-country producers who are paying the nearby farm location differential? A. Again, I must go back to the original point. And that is that it was not my purpose and it is not my purpose to justify the use of farm location differentials, but merely to point out that once they had become embedded, as they have become embedded, there are these various problems, and the removal or alteration of these differentials will cause distortions in the whole orientation and organization of the markets involved.

Q. Do you think that the special location differentials [2546] for nearby producers now provided for in several of the orders, or in the New England orders, are justifiable under present conditions, especially where high percentages of the pooled milk are used in Class I? A. Again I would have to answer the same as I answered your previous question.

Q. What was that? A. That it is not my purpose to attempt to justify the use of farm location differentials, but to point out the effects of the change or removal of them.

Q. Then would you recommend that the justification for such differentials be re-examined, and that where appropriate they either be reduced or eliminated? A. If there are overriding considerations above and beyond the types of effects that would be caused by this, yes.

MR. TIPTON: That is all I have.

EXAMINER HOLSTEIN: Is there any further cross examination?

Mr. Carroll.

By Mr. Carroll:

Q. I understand, Dr. Clark, that you have not, in your direct testimony, given any justification for this differential, and I have a series of questions, and I want to state that at the beginning, so that there will not be any confusion between us.

But in a free market, without Government price fixing, [2547] and in the field of milk specifically, is there not, by the natural laws of economics, generally given some priority in terms of pricing for sources of supply that are relatively closer to markets than other sources of supply? A. This is my impression. However, I am not very familiar with many of the free markets that you talk about.

Q. And is it your understanding that in the government scheme of price fixing, the function of the location differential is to re-establish to some limited extent the natural priority that would have existed in the absence of price fixing? A. That is my understanding of why this came about in this form, yes.

Q. Now, in regard to your statement, on page 25, in the second full paragraph, and the second sentence, you make the following statement:

"Furthermore, once a farm location differential becomes a part of the price structure, the benefits that accrue become embodied in the cost structure."

MR. LENT: Mr. Hearing Officer, it is not the second sentence but the third sentence. And the word is not "embodied." It is "embedded."

MR. CARROLL: I will accept that. I will accept those changes. It is the third sentence, and the word is "embedded," and not "embodied."

By Mr. Carroll:

[2548] Q. Now, will you tell me what you meant when you indicated that these beneifits are embedded in the cost structure? How does that occur? A. Through capitaliza-

tion, either in terms of land values or in some other tangible property right.

Q. Does that have a bearing upon the cost of the individual producer that you have been talking about? A. Yes, it does.

Q. And what bearing upon cost does it have? Would it tend to increase cost? A. It would tend to increase cost.

Q. Is that an operation of basic economic principle, or is that limited just to farm location differentials? A. I think that would be a basic economic principle, as set forth in these terms: that if I were a prospective milk producer, and were faced with alternatives, buying land in an area that would provide an adequate return, as opposed to an area outside such an area that did not fall within such a location zone, I would be willing to bid more for land of equal quality, equal in all other aspects, than for that which would provide this extra return.

Q. And would that be true of the other elements of production? The animals, and the other elements that go into this? A. Well, not necessarily so. In this particular example, I more or less pinned the factors upon which this added return [2549] were to accrue to the land.

Q. That is by way of illustration? A. By way of illustration, as a general economic principle.

MR. CARROLL: That is all.

EXAMINER HOLSTEIN: Mr. Lent.

By Mr. Lent:

Q. Did you ever hear of any such thing as a nearby cow? A. Yes.

Q. What is the difference between a nearby cow and an up-country cow? A. In the sense in which I answered your question in the affirmative, it is a matter of fact that in the State of California producers located nearby Los Angeles distributing plants are able to obtain more favorable contracts and thus a higher Class I utilization, than producers that are located in the central valley or any other place.

In this particular instance, the value, the added return, is capitalized on the basis of the cow, and in terms of what are locally known as shipping rights, which are transferred with the cow.

Q. You do not think individual cows have individual characteristics? A. Just as the fact that if you have that particular market outlet you are eligible to participate in higher Class I utilization.

[2550] I should also explain that this phenomenon results from the fact that we do not have either individual handler pools or marketwide pools, but rather individual plant pools.

Q. Or individual cow pools? A. Well, we haven't got quite that far yet.

MR. LENT: My questions are subject to the same qualifications I put in the record before.

EXAMINER HOLSTEIN: The record will so show.

Are there any more questions?

Mr. Pelley.

By Mr. Pelley:

Q. With respect to the development or origin of the preferential values that nearby producers had become accustomed to, is it not true that before the federal order, the state order in Connecticut gave preferential allocation of local-produced milk? A. I am not sufficiently acquainted with the operation under state control in its latter years to answer that question.

Q. In answer to Mr. Carroll's question a moment ago, you had indicated to Mr. Carroll that these values had developed before governmental regulation. Now, did you mean state governmental, or were you limiting that answer to Federal Government regulation? A. I would expect that this type of situation would exist prior to any form of regulation that involved marketwide pooling.

[2551] Q. I was referring specifically to your answer to Mr. Carroll and wondering whether you were referring, in your answer to him, to federal regulation, as opposed to state regulation and limiting your answer to state regulation. A. I was not limiting it to federal regulation, nor to state regulation, for that matter, nor to government regulation.

In other words, it is conceivable that a market could be organized without either state or federal regulation, and operated with a marketwide pool with devices which provided special incentives or special differentials to nearby producers for

the same purposes as stated in the text of my statement.

Q. Well, do you know specifically whether this preferential preference to local producers had grown up before the institution of state regulation? A. Are you talking about the New England markets?

Q. In Connecticut, specifically. A. I can't honestly say I do know that specifically.

Q. In your study of the decision, the promulgation decision, with respect to the Connecticut market, was it a prime consideration there that unpriced milk was breaking the price in the Connecticut market? A. That is correct.

Q. And so, in absence of federal regulation, was it not likely, in terms of the Secretary's viewpoint, at least, that the preferential value was about to be dissipated by competition [2552] from outside areas? A. Again, I can't answer that question. I just don't know.

Q. And if that were true, would it not appear that under a purely competitive relationship, or an absence of governmental regulation, assuming that to be true, the preferential values to nearby producers were about to disappear? A. Well, if I may, I would like to go back and clarify one point.

In your question, I thought you used the term "purely competitive" as synonymous with the absence of government control. I can't make these two considerations jibe, because I don't think the absence of the government control in any way, in the dairy industry, reflects pure and perfect competition.

Q. On that basis, then, if we would throw out consideration of "purely competitive," and just say that on the basis of the case that I gave you as a hypothetical consideration, would not the preferential payment to nearby producers have disappeared, in absence of federal regulation? A. Would they not have disappeared?

Q. Yes. A. I don't think so; for the reason, as I stated before, that historically there seems to have been a tendency for local producers to obtain a higher percentage of Class I sales, than far distant producers.

[2553] And I am not sure I know what would tend to make this dissipate, under the same type of conditions that

existed prior to the adoption of some type of regulation, and particularly some type of regulation which involves the use of marketwide pool.

Q. Would you think that the availability of large quantities of milk at the Boston blend price would have discouraged local handlers from paying the Class I price at the levels prevailing previous to federal regulation? A. Oh, I most certainly do. The availability or access to unregulated milk, under terms of the use of the classified price system, and just the opportunity to get unregulated milk, would tend to provide an incentive for handlers to get out from under regulation.

And to this extent, not only would any preferential treatment disappear, but the effectiveness of any type of regulation would disappear.

* * *

TESTIMONY OF DR. C. W. PIERCE
Connecticut Milk Producers Association

(2639) Advantages associated with nearby milk

The dollars and cents costs of moving milk, while an important item in measuring the values of milk at different locations and therefore the adequacy of Class I zone differentials should not obscure consideration of less measurable values of nearby milk.

(2640) Location advantages of nearby supplies include greater availability at any time when transportation may be interfered with seriously. The nearby milk also is more available for quality supervision, particularly by small processors. Cooperatives make valuable services available to buyers of nearby milk. These include quality supervision of the supply, balancing of supplies and sales during the week, over weekends and over longer periods of time and the keeping of records and handling of payments to individual producers.

Lacking precise mathematical measurements of the values of certain attributes of nearby milk supplies, there

is disagreement as to whether nearby milk possesses any extra value as compared with more distant milk other than the extra cost of moving the more distant milk. No claim is made, however, that the more distant milk supply has attributes enhancing its value. Thus, we can conclude that the advantages claimed to be associated with nearby milk are worth a zero amount or something more than zero.

A measure of the advantages of nearby milk may show up in its salability for fluid use. If the cost of moving milk is equal to or less than the Class I zone differential, and yet nearby milk has continued to be utilized for fluid use, there exists a basis for demonstrating that nearby milk has attributes of real value.

The Market Administrators of Connecticut and (2641) southeastern New England orders have published uti i-zation data of milk received at city plants and at country plants. These were included in Exhibit 7. For selected months these data were as follows:

Month	Market	Per cent used in Class I milk received at City plants	Country plants
September 1961	Connecticut	88.6	51.6
	S. E. New Eng.	95.1	59.0
October 1961	Connecticut	86.5	39.5
	S. E. New Eng.	93.2	38.1
January 1961	Connecticut	79.2	32.5
	S. E. New Eng.	91.2	24.6
March 1962	Connecticut	80.6	28.4
	S. E. New Eng.	92.4	25.2

The comparative utilizations of the milk received at city plants and country plants show the nearby milk has found a ready market for fluid use. This situation could result from a transportation differential under the order

less than the cost of moving milk, or if the differential is adequate or more than equal to the cost, from the characteristics of nearby milk which enhance its value for fluid use. The greater than average Class I utilization of nearby milk is not explained by any increase of fluid milk sales into outside markets.

[2642]

MR. LENT: To help the record, before we pass this point, is that year correct, after the word "January"?

THE WITNESS: No, it is not. It should be January 1962. Thank you.

THE WITNESS: Other Functions of the Zone Class I Price Differentials.

Thus far, this statement after mentioning the several functions of the Class I zone differentials, has been concerned with the differences in values of milk received from producers at different locations. In evaluating the appropriateness of the present differentials or proposed differentials, consideration needs to be given to all of their functions.

TESTIMONY OF STEWART JOHNSON
Connecticut Milk Producers Association

DIRECT TESTIMONY

The Witness: I would like to make three points supplementing the statements presented by David Clark, Jr., Ken Geyer and James Lee opposing Proposal 52, the adoption of which would reduce or eliminate location differentials.

This statement is on behalf of three Connecticut cooperatives; the Connecticut Milk Producers Association, Modern Milk Marketing Association, Cooperative Dairy, and also in response to the invitation of Howard Fedderson, Acting Director of the Milk Marketing Orders Division, Agricultural Marketing Service, United States Department of Agriculture, to present testimony pertinent to the issues at this hearing.

The first of these points concerns a question by Mr. Tipton to Mr. Lee this evening inferring that in the (4063) Connecticut market the retention of the location differential was unimportant because in 1962 it cost the pool 43.4 cents per hundredweight, which is nearly as much as the highest nearby rate of 46 cents. In the first instance, of course, with no shifts in supply, it would cost only 2.6 cents per hundredweight. However, this is quite misleading as to the cost over a period of time.

With the substantial increase in attractiveness of the Connecticut market to distant producers, however, supplies would be expected to shift into the Connecticut market, and quite soon. If enough milk shifted to bring the same price relationship with New York and New Jersey as before, the price to nearby producers would be reduced by the full 46 cents. Thus, the price cut would be a substantial one.

My second point is that the values of nearby milk for which location differentials are paid are separate and apart from the system of charges to dealers; that is, separate and apart from Class I prices, Class II prices, transporation differentials, and so on. Instead, the location differentials represent extra values of nearby milk relative to distant milk which local producers received in the absence of Federal regulations and in the absence of equalization under a marketwide pool.

Because of not making this very important distinction, Mr. Tipton's questions to Mr. Lee and Mr. Sykes this evening and (4064) the question of Mr. Chernauskas to Mr. Sykes on values of nearby milk versus distant milk which were related to charges to dealers are largely irrelevant to the location differential problem.

My third point is that the expected gains to the Vermont dairy farmers from eliminating location differentials might be illusory, and quickly lost, or even more than lost. The chain of events that might lead to this result is as follows: First, producers now under the New York-

New Jersey order would be expected to shift to New England orders if the blend price advantage at distant points under New England orders should increase by as much as 43.4 cents per hundredweight, as shown in Table 3 of Exhibit 77.

If producers did shift from Order 2 to New England orders, the blend price in distant areas under the New England orders likely would be reduced, approaching the Order 2 level and as nearly as it does at present and after a short period of time.

Under the new equilibrium situation, with about the same New York-New Jersey versus New England price difference as now exists, relatively more of the producers under New England orders likely would be members of New York-New Jersey cooperatives than if location differentials had not been reduced.

Wtih New York-New Jersey cooperatives having a (4065) greater share of producers in New England markets, the possibility of merging Order 2 and New England orders would be increased.

If this occurred—a merger of Order 2 and New England orders—and with the 1962 Class I percentage 49 in New York-New Jersey and 65 under the New England orders, the order blend price to Vermont farmers could very well be reduced from present levels under New England orders.

If this chain of events occurred, therefore, Vermont farmers who expected to have a higher price due to the removal of location differentials might instead receive the same or a lower blend price.

Cross Examination by Mr. Tipton:

Q. At somewhere in your statement you make the statement about the extra values of the nearby milk which the local producers have received, going back for a moment to prior to Federal regulation. Those extra values were e

tra values to whom? A. These were extra values received by local producers in the form of higher blend prices.

Q. So it has no relationship, or you contend that actually there is no relationship to the value of the milk (4066) to the nearby farm location differentials? A. There would be a point for location differentials and a justification with the same Class I prices if utilizations differed, and this is an important reason why the blend prices were higher to nearby producers, the percentage utilization in Class I was greater.

Q. Are you talking about now an individual handler pool? A. And before regulation we did by and large have individual handler pools.

Q. Well, if you had an individual handler pool, then each producer delivering to each handler that he delivered or the handler he delivered to would receive the same price based on the utilization of that handler, isn't that correct? A. That is generally correct.

Q. On a marketwide pool the distribution of the proceeds is based on the utilization of all milk by all handlers, is it not? A. That is correct and the location differential is in large part to compensate for the nearby dairymen for the loss of Class I sale to the market by fall.

Q. You also mentioned that the up-country prices that might be increased if nearby farm location differentials were deleted might be illusory and the fact they might be reduced because of additional supplies coming into that market; however, (4067) you did not make any mention of the effect of the deletion of nearby farm deletion on the nearby areas. Would you think there might be some effect there? A. I think there would be some reduction in the nearby areas and this would be offset in the same period of time by some increases in distant areas during that interim period before the prices came down to where they were before.

Q. Sooner or later you are going to reach an equilibrium; in other words, nearby milk going out or smaller

amounts are nearby milk, the price up-country going down somewhat from what it was immediately following the deletion of nearby farm location differentials, would you now have more or less milk in total? A. I think in total you probably have about the same.

Q. But this might represent a lesser amount of milk in the entire area, including what might have come from New York, is that what you are saying? A. I think that the total amount in the Northeast probably would be very nearly the same.

Q. Nearly the same as what? A. As much of a chance it would be greater as it would be less.

Q. The same as what? A. As before.

Q. Would that be as a result or cause of the deletion (4068) of the nearby farm location differentials or because of other practices? A. I think that the deletion of the farm location differentials would have an effect on the geographic location of this production, but as far as the total Northeastern production I don't think that it would have a great effect plus or minus.

Q. Well, there is approximately 45 per cent—the figure is in the record—of the total amount of milk that was pooled under the five New England orders that comes from the nearby areas. Is that about to your recollection what the figure is? A. I don't remember.

Q. Well, assuming for the moment that that is, whatever the figure was, now what kind of a reasonable estimate would you think of this—what would be the change in this relationship, is what I want to ask, if we deleted the nearby farm location differentials? A. Well, if they were deleted, it would tend to reduce the production of milk in the nearby area because the price would be lower. It would tend to increase the price and production in distant areas except as the New York-New Jersey milk rushed in and brought the price down before producers have a chance to respond.

Q. But what would you think would be a proportionate (4069) relationship after we deleted the nearby farm loca-

tion differentials? A. I have no estimate on that.

Q. But it might be substantial, or do you think there would be still a quantity of nearby milk available? A. I think there would be quite a quantity, but it would be less.

Q. Dr. Johnson, isn't one of the purposes of the price setting mechanism in the Act to attract an amount of milk which will insure a sufficient quantity of pure, wholesome milk to satisfy the needs of the area? A. I think that is in the Act, yes.

Q. In your opinion is the present price structure effectuating that purpose? A. I think so. As far as the nearby area is concerned, I don't think that the increases in production in recent years have been as great as in the more distant areas, so that the price certainly under the Connecticut order, including the location differential, has not been high to the point where production has tended to increase and the number of producers to increase; in fact, quite the contrary. There has been a [4070] substantial reduction in both number of producers and in volume of output in the last three years.

Q. I think you have already stated that deletion of the nearby differential would result in a higher price in the upcountry area and also a resultant increase in production. A. That is correct except that the production response occurs slowly and I would expect there would be a flood of New York milk into the market rather quickly to take advantage of this higher price and might reduce the blend rather quickly so that you would have only a minimum production response.

Q. Is it conceivable that there would also be in effect an increase in your encouraging an increase in New York then, too? A. To the extent that the price was raised, but they are a large market of course relative to the New England markets combined so that the effect is to dilute it.

MR. CHERNAUSKAS: That is all.

EXAMINER HOLSTEIN: Mr. Cobb.

By Mr. Cobb:

Q. Dr. Johnson, if the nearby farm location differentials were removed from the Connecticut order and as a result of this there was more milk that did come into the Connecticut

market, would nearby or local producers in Connecticut have a tendency to become producer handlers? [4071] A. I think that the incentive certainly would be greater and there would be more producer handlers than otherwise.

Q. If the difference between the blend price under the order and the Class I price lightened, do you think that this would tend to increase the incentive for producers to become producer handlers? A. It would.

MR COBB: That is all I have.

EXAMINER HOLSTEIN: Mr. Little

By Mr. Little:

Q. Dr. Johnson, in reply to a question from Mr. Tipton I think you stated that one reason for these nearby farm location differentials was to compensate the nearby producers for their pooling under a marketwide type pool. Now would it not be true that as Class I utilization increases the need for these nearby differentials might decrease? A. If it increased sufficiently, why, it could.

Q. On that basis wouldn't it perhaps be more realistic to have some sort of nearby farm differential that would vary as your utilization varied? A. Well, this is the logic of the system in the New York market. I am not proposing it here.

Q. All right. One other question. In your statement on these nearby differentials, the effects that the deletion [4072] could have on the New England pools, the Connecticut pool perhaps specifically, am I right in assuming that you are considering these nearby differentials as somewhat of an effective way to keep New York-New Jersey milk out of the Connecticut order? A. Well, this of course I have not stated as the justification for location differentials. I have stated that they are the recognition of the extra value of the nearby milk.

[4072] Q. Didn't you state that deletion of these differentials would result in milk moving into the Connecticut pool from the New York-New Jersey pool? A. That is correct, and as long as this is not labeled as justification why I think we are completely in accord that the effect of their removal would be that more New York milk would move into the Connecticut pool. With that I agree.

[4123] FRED BRIDGES

was called as a witness and, having been previously sworn, was examined and testified as follows:

DIRECT TESTIMONY

THE WITNESS: The first testimony that I want to offer is on behalf of the Worcester Milk Dealers Council [4124] and is opposition to Proposal 52. I am going to respect Mr. Holstein's request that repetitious material be kept out and make this as brief as possible. I think Ken Geyer and James Lee have pretty much covered the situation but there are a few things that I would like to read into this in addition to what they have said.

It is apparent that the 46 cent and 23 cent farm location differentials were originally included in the Boston order by authority of the Agricultural Marketing Agreement Act of 1937, Section 608(c)(5)(b)(ii), referred to in Mr. Tipton's testimony on January 19th, Exhibit 55. Mr. Tipton argued that the Act did not specify that differentials customarily applied by the handlers be continued indefinitely. Neither does the Act indicate that such traditional differentials paid by handlers to nearby and intermediate producers be discontinued or eliminated.

Mr. Lee in his testimony on Table 2, Exhibit 77, showed the value of the differentials in Worcester and that the contribution by all handlers was slightly over 34 cents. I have gone a little further with that. The monthly and annual statistics as published for the Worcester market show in some months the receipts from nearby and distant producers separately. As Worcester has no intermediate farm zone it is a simple matter to determine the actual financial benefit to nearby producers on account of the nearby differential.

[4125] In 1950 nearby and distant figures were shown for five months, March through July. During that time 83 percent of the total receipts were from nearby producers, 17 percent from distant producers.

In order to pay 46 cents to nearby producers it was necessary to deduct 39.19 cents per hundredweight from the use

value of all receipts. Therefore during those five months the nearby producers actually paid 39.19 cents of the 46 cents themselves and gained only 7.8 cents. During that time there were 3 country plants in the Worcester pool. Receipts from nearby and distant producers were not shown separately for the years 1951 and 1956, therefore similar figures could not be obtained for those years. In 1957 separate figures were shown for only November and December. During those two months there were two country plants, nearby producers delivered 80.9 percent of the total deliveries with a net gain of 8.8 cents per hundredweight.

In 1958 separate figures were shown for the entire 12 months. During that period of a year were two country plants nearby producers delivered 80.7 percent of the total deliveries to pool deliveries. In order to provide a 46 cent premium to 80.7 percent of the receipts it was necessary to deduct 37.1 cents a hundredweight from the total use value.

Thus on a weighted average basis for the year 1958, [4126] nearby producers actually received benefit of 8.9 cents of the 46 cent differential.

In 1959 with two country plants, not the same two as in 1958, nearby producers delivered 76.2 percent of all producer deliveries with a net premium amounting to 10.93 cents of the 46 cent farm location differential.

In 1960 there were two country plants January through August, four additional plants qualified effective September 1, 1960. As a result only 68.7 of this—68.7 percent of the total producer deliveries were made from nearby farms. Thus the deduction to provide the 46 cents was spread over a much larger production resulting in a net gain for nearby producers amounting to 14.38 cents a hundredweight.

In 1961 there were 5 country plants in the Worcester pool from January through May, four in June, three in July and August, four in September, and back to two during October, November and December.

With this movement of country plants, the monthly percentage of nearby deliveries fluctuated considerably during the year. However, for the entire year nearby producers supplied

67.3 percent of the total producer deliveries and 15.03 cents. The monthly net portion of the 46 cents gained by nearby producers ranged during the year from a high of 18.72 cents in January to a low of 8.43 cents in December.

[4127] In 1962 based on an unaudited month statistic and with two country plants, January through June, 5 in July, 4 in August, 3 in September and October and November, back to 2 in December, nearby producers delivered 74.48 percent of the total producer deliveries.

In order to provide the money to pay a premium of 46 cents on 74.48 percent of the deliveries, it was necessary to deduct 34.26 cents from the use value of all producer milk delivered resulting in the nearby producers receiving on a weighted average basis for the year 11.74 cents of the 46 cent differential. This agrees with the figure that Mr. Lee has in his table 2, Exhibit 77.

Although it appears from the order language that nearby producers receive a premium of 46 cents a hundredweight, this is not the case. During the past 12 years they have themselves contributed a large part of the 46 cents so that the actual financial gain to them on an annual basis has been as low as 7.8 cents a hundredweight and never more than 15 cents a hundredweight. It is very apparent that if the proponents of proposal 52 are successful, the result will be an immediate increase in the distant area blend prices based upon 1962 figures of approximately 34 cents a hundredweight and a decrease of approximately 12 cents on milk produced on nearby farms. It seems obvious that if proposal 52 is adopted then the ultimate result will be [4128] greatly increased production in the less populated lower production cost areas in the Massachusetts producers and the Massachusetts producers will be forced out of business. When I speak of the less populated areas I am referring back to Mr. Webster's testimony in Boston on January 15, Exhibit 39, when he gave figures of a population of 654 persons per square mile in Massachusetts as compared with 42 in Vermont and 67 in New Hampshire. To use this indicates that the Massachusetts farms still retain a provisional customer appeal in being in the nearby area. As was brought

out last night in the cross examination there is great advantage in having nearby milk accessible in emergency cases.

That is all on that.

EXAMINER HOLSTEIN: Any cross examination on the testimony thus far with respect to location differentials?

Mr. Tipton.

CROSS EXAMINATION

By Mr. Tipton:

Q. At the beginning of your statement you quoted from the statement that I had made previously and then said there was no compulsion on the part of the Agricultural Agreement Act that they could be related. However, don't you think that one of the things of consideration here is whether there is a change of conditions in which they were justified originally whether those conditions are still [4129] applicable under today's marketing conditions? A. There may be some change in conditions, Mr. Tipton, as you will probably learn of improvements of the farms and accessibility of distant milk through super highways and bulk tanks, but I still claim that nearby milk does have a value on account of its accessibility to the market. As I think I have brought out on cross examination last night, we have had many cases in Massachusetts, Worcester, particularly, on something that has happened in the plant, either through accident or bad milk or spillage, that the handler has had to send out his trucks and pick up milk on a second pick up on the farm in order to have milk to use that day which would be impossible if he had to go to distant farms for it.

Q. You said that it had a value because of accessibility. Then to whom does it have this value? A. Well, this value to the handler in having the milk accessible when he wants it and also value to the producer having the nearby market which he has traditionally had is a value to each.

Q. So the value to the producer is contingent upon whether it is or has any additional value to the handler, is that correct? A. Well, I think the value to the producer is also associated with the fact that he has traditionally had the near-

by market closer to a metropolitan area and it was [4130] recognized in the early days that that milk was worth more and I think too that we have been talking about differential over and above a country price or distant price. I think back in the old days that the price was pegged more to a city price and that the handlers were not willing to pay as much money for distant milk as they had to before because it was not as accessible to the market.

I think the same provision applies today.

Q. You maintain that that condition is applicable today, that handlers in the nearby area purchasing milk from nearby producers are not willing to pay the same price up country? Is that what you are saying? A. We think so. I think that also as far as Worcester is concerned, that is what I am immediately interested in, I think that statistics of the market administrator show from the percentage of nearby milk that comes into the Worcester market that the handlers in general are more favorable to the milk up country than distant milk.

Q. How much more do you think that a handler buying milk from nearby areas is willing to pay for that milk; that is, buying up country milk that is delivered to his plant? A. I think that experience over the past 30, 40 years will show that he is willing to pay the price of such a market.

[4131] Q. Why don't we write that into the order, that the handler will pay 46 cents more? A. What is that?

Q. Why don't we write that into the order that the handler will pay 46 cents more? A. You have got it in your farm location differential.

Q. Well, the handler does not pay 46 cents over his up country cost, that 46 cents is taken out of the pool. A. Well, what are you talking about, the up country cost, the farm location or the supply plant cost up country?

Q. Well, you said that you thought that a handler would pay more for the nearby milk than— A. Distant milk, I meant distant milk.

Q. All right. Now then I am asking you how much more do you think that a handler would pay for nearby milk as compared to up country milk? A. Well, I don't know what

he would pay but he has traditionally paid even before federal orders and has continued to pay the 46 cents.

Q. I thought the nearby handler paid actually 54 cents as compared to milk delivered directly to his plant, as compared to milk delivered in the 21st zone? A. We are talking about the farm location differential here, Mr. Tipton, and not the zone differentials?

Q. We are talking about the price that the handler [4132] pays for the milk. A. We are talking about the price that a handler pays for his milk at the city plant, and as far as that is concerned what the handler pays the city plant is the same as class milk prices if he uses Class I prices, Class II, what he uses as Class II. It is the producer that will gain on the differential.

Q. Well, in effect a handler will not pay any more for nearby milk than for up country milk? A. He does not have to under the order. He pays the Class I price.

Q. And he probably would, is that true? He won't pay a premium in other words? A. Well, the order does not require him to pay a premium but prior to the days of federal order in which the 46 cent differential was set up, if you want to call it a differential, the handler did pay a premium of 46 cents and the producer got that premium. That was the basis I believe for writing it into the order.

Q. Now you mentioned the ability of a handler that buys milk from nearby producers to pick up that milk during the two times a day. Would you say that that is a normal process that a handler goes through if he needs additional supplies of milk or would it be more normal and probable that he would contact another handler and have it sent over [4133] by another handler rather than send his truck out? A. I think that he would. Of course again I can't say what he might do in Washington or what he might do in Boston or Southeast or Connecticut. As far as Worcester is concerned I feel, and I think I can almost definitely state, that the handler would send out his pick up equipment to get a second pick up at those farms rather than pay a premium whether a handler were buying from the handler, say a handler selling one to another, charge a handler a handling cost on that milk.

Q. How long does it take for milk that is picked up one day at the farm, say, and delivered to a plant in the 21st zone, before that milk is in the city and available for bottling? A. Well, you are talking now about several different methods. I will have testimony on that later. There are many methods for picking up milk in the country. If milk is picked up in the 21st zone in a tank truck, picked up in pick up trucks, transferred to an over the road trailer and some garage, it is probably down there within 24 hours, but if it goes through a receiving plant it takes considerably longer.

Q. Well, it takes considerably longer. Isn't the normal process up country for milk to be picked up at a farm every day or every other day and delivered to a plant [4134] and it leaves that plant that evening then and arrives in the city the next day. Isn't that the normal procedure of the up country receiving operations? A. In some cases.

Q. Is that normal? Is that the normal operation or is that an abnormal operation? A. Well, no, I would like to use the dictionary like Mr. Sykes.

We have three different types of plants if you are talking about country plants which I have not said anything about. My testimony here has been entirely on farm locations, farm locations differentials you call them. Now you are getting into country plants and I think you are getting into the 54 cent zone differentials which I am going to have something to say about a little later.

Q. My question didn't have any relation to the 46 cent differential. I am simply trying to establish what is the normal condition that milk supplies from up country are available in the market as contrasted maybe to milk supplies available from nearby areas. A. Well, you have four different methods of getting milk down out of the country the way I see it. First you have got this Sand Pit Garage Transfer that I talked about. You also have what I call abandoned filling station type plant and there under the Boston, Worcester and [4135] Southeast Orders the definition of a plant is that milk picked up at a producer's farm delivered to a building where washing and sanitation facilities are maintained and his [is] there transferred to stationary equipment in the plant or to another

vehicle. it is considered the zone price at that plant. That milk probably moves down almost as fast as this bulk transfer on the side of the road.

You will have another type of plant which is a manufacturing plant that is primarily supplemental supplies. That is something else again. How often that milk moves out is problematical.

You have a third type of plant which is primarily a Class I receiving plant and there are many of them scattered around through Vermont and the Boston area. Those plants receive milk maybe picked up every other day, maybe every day from the farms. It comes in separated and sanitized, put through the plant. It probably leaves that evening so it may be the next morning. But he cannot in an emergency get it as quickly as this nearby milk that may be 10 or 15 miles away.

EXAMINER HOLSTEIN: Mr. Cutting, do you have any inquiry?

MR. CUTTING: If Mr. Tipton is through.

EXAMINER HOLSTEIN: I don't think he is.

By Mr. Tipton:

Q. I realize that we don't have a spot market per se here in Boston but we do have milk that is available for [4136] sale from handlers that are surplus to their operations or almost daily do we not? This milk is available to small handlers or large handlers that want to buy it, it is available to any handler that wants to buy it, isn't that true? A. It is true if they want to buy it and pay the mark up on it and take the milk as is. I am not criticizing anybody's quality but among our handlers who are rather proud of their quality they don't like to mix in with local milk something that may be two or three days old by buying it from some of these sources that you speak of. They would much rather send their truck out and pick up fresh milk and keep up the quality which they try to maintain. Now in saying that I am not saying anything at ail against the quality of this milk that you speak of, it may be just exactly as good, but it is a personal matter probably with the handlers involved.

Q. Well, there are some costs involved to this handler sending out his truck to pick up some scattered producers that

might have some milk in their vat when he needs it in the middle of the day, isn't there? A. Well, but to the extent that he may subsidize the truck because he has got an investment in his tank truck and he is paying its driver and he may not be getting enough out of his cartage to pay for that so they– well, theoretically he is subsidizing some of the cartage. Whether he picks it up this morning, this noon or midnight [4137] tonight it is so many hundred pounds from that producer and the producer is paying cartage on that number of pounds of milk.

Q. So the producer would stand the cost of this additional pick up. In other words the producer would be on every other day pick up. Could the producer stand the cost of that pick up? A. So much per hundredweight. It does not make any difference. He pays so much per hundredweight.

MR. TIPTON: That is all.

EXAMINER HOLSTEIN: Any further questions?

Mr. Cutting, you are next.

By Mr. Cutting:

Q. Mr. Bridges, perhaps we can clarify the record on what at least one handler might do with respect to this local milk and what his feelings might be. As former deputy administrator of the Worcester order are you familiar with the operations of Hillcrest Dairies to some extent?

MR. CHERNAUSKAS: I object to that. That is getting into the realm of information this witness received in his official capacity and it could bring him into the point of revealing confidential information, Mr. Cutting.

MR. CUTTING: I will rephrase the question.

MR. MAHONEY: May I point out, Mr. Cutting, he is still– [4138]

MR. CHERNAUSKAS: It might be better for Mr. Cutting to present the information himself.

I don't want the witness to be put in the position of being possibly accused of giving away confidential information which he received in his official capacity.

MR. CUTTING: I will rephrase my question.

EXAMINER HOLSTEIN: The question is withdrawn and will be rephrased.

By Mr. Cutting:

Q. In the preparation of testimony for this hearing and working with the dealer's counsel did you become quite familiar with the operations of some of the dealers, including Hillcrest Dairies? A. Yes. I don't know, anything that I say in that respect is something that I have learned since January 1st and nothing with regard to any information I have about any handler in Worcester or any other market prior to January 1st, 1963.

Q. In working with myself in the preparation of the materials for the Worcester Milk Dealers Council have you noted that our receipts from producers vary somewhat in the frequency of pick up, and has it been explained to you that we have done this to accommodate our requirements for milk for processing? A. Yes.

[4139] MR. CUTTING: That is all.

EXAMINER HOLSTEIN: Dr. Johnson.

By Dr. Johnson:

Q. Mr. Bridges, was a large part of the higher price of nearby producers before federal order regulations due to a greater percentage of the nearby milk going into Class I? A. I think that is true, Mr. Johnson.

Q. Are location differentials which are paid nearby producers in considerable part to compensate them for sharing that high Class I percentage with distant producers under a market wide pool? A. Yes.

Q. Are the values of nearby milk for which location differentials are paid out of the pool separately and apart from the system of charges to dealers; that is, separate and distinct from Class I prices, Class II prices, transportation differentials and so on? A. Yes. I think I showed that in my testimony that the amount of money that was taken out or contributed by all producers to pay the 46 cents to a large percentage of the nearby deliveries and the Class I or the price to the handler is the same according to his Class I requirements. Was that your question?

DR. JOHNSON: Yes, thank you.

[4140] EXAMINER HOLSTEIN: Any other questions? Mr. W. T. Smith.

By Mr. W. T. Smith:

Q. Do I gather from an answer you made to Mr. Cutting, Mr. Bridges, that you feel that the nearby producer actually provides the handler in Worcester for example with greater services than the producer who might be located in a distant region? A. Well, getting back to the dictionary to services, he provides the handler with quicker service by being nearby and having the milk accessible and the quality and grade that the handler has been in the habit of receiving. If Mr. Geyer needed that milk that he was getting from certain farms to blend in with the rest of the milk that he had at that time, it is of valuable service to him to be able to go out there and get that milk rather than have to send it—to send to the country and have to wait several hours for it.

Q. Isn't it true, Mr. Bridges, that many nearby producers have provided much larger bulk tank facilities than would normally be needed just as an accommodation to the handler who buys their milk? A. Yes, and that has been particularly true, Mr. Smith, since we are getting into modern times, with every other day delivery and three days a week larger surpluses have to [4141] be carried for that purpose.

Q. And also isn't it true that the competitive situation on the street when handlers to some extent obviates the transfer of milk from one handler to another?

Let me expand on that question just a little bit.

EXAMINER HOLSTEIN: If he can answer it, let him answer it.

THE WITNESS: I would rather not answer, only if he explained it.

By Mr. W. T. Smith:

Q. Isn't there a sort of a human element of suspicion between handler A and handler B which prevent handler B from going to handler A except under extreme conditions to purchase supplies? A. It could be in some instances. We do not admit in Worcester that there is any suspicion between handlers.

Q. Would you accept my statement that there is suspicion between handlers in the Southeast area? A. If you say

so, I will accept it. I don't know anything about the Southeast area.

* * *

[4015] CHRISTOPHER B. SYKES

was recalled as a witness and, having been previously sworn, was examined and testified further as follows:

EXAMINER HOLSTEIN: The written statement which Mr. Sykes will read into the record and to which are attached two tabulations will be marked Exhibit 93 for identification.

(Exhibit 93 was marked for identification.)

DIRECT TESTIMONY (Resumed)

THE WITNESS: Thank you, Mr. Examiner. My statement is as follows:

[4016] We are unequivocally opposed to Proposal 52 whether it be coincident or not to a merger of any or all of the New England orders.

It seems pointless for us to include in our testimony any further analysis of the circumstances and the evidence which led inescapably and justifiably to the original incorporation of farm location differential payments at current rates in the Boston order initially and later in each of the other New England orders upon promulgation. Exhibit 24 constitutes an adequate basic record for this purpose taken with direct testimony already given in this hearing by Mr. Lee for NEMPA and by Mr. Geyer for CMPA.

It does appear, however, that some additional analysis of what we believe to be the basic facts as well as a sound critique of terminology is called for. The facts are that, during the time antecedent to the inception of federal regulation, milk dealers were paying more for nearby milk than for distant milk, not necessarily because its intrinsic value as milk was greater but because of its geographical origin. This higher rate per hundredweight was not arrived at by milk dealers then through the process of computing a distant price and adding thereto a premium of differential in order to arrive at a final figure. The current use of the word "differential" can therefore be misleading in itself, unless one remembers that

originally [4017] it meant only that the prevailing prices for nearby and for distant milk were different and by an amount which was determined probatively to be 46 cents in some instances and 23 cents in others. There was no evidence then, nor was there since any new concrete evidence developed, that what became a "farm location differential" in the New England orders was ever paid to nearby milk producers by the handlers themselves, except as an inseparable component of a higher going price for milk.

Given the presence of such price stratification as did exist in the market at the time, the Secretary appears simply to have decided, in line with the Act's prescription that a determination of parity prices is a prerequisite that such federal regulation as was to be insituted in the Boston marketing area must, in its provisions governing the determination of prices to producers, give recognition to the then existing price structure which was an undeniable and salient feature of the pre-order marketing procedure. We cannot now conceive of any manner in which this previous relationship of prices could have been preserved in a market wide pool except through the specification by regulation that nearby producers would continue to receive a higher rate of payment for milk and that such payments would continue for milk and that such payments would continue to be an obligation of the regulated pool inasmuch as, before regulation, they had been the result of simple [4018] economics in the milk market which was to be pooled. The established higher monetary value of nearby milk in the open market prior to federal regulation was thus maintained with the inception of the regulated market by means of provisions requiring the allocation to such milk of pool funds in a manner designed to preserve a prior status quo, or uniformity, of price.

* * *

[4023] Within the scope of this definition, the farm location differential is a form of payment the provisions for which are characteristically repeated in like milk marketing orders. And it is a payment common to particular places or groups of producers. Within the concept of the legal section of the

definition, the provisions for payment of farm location differentials constitute long established practice resting for authority on long consent, viz. the frequent and continued acquiescence, jointly or severally, of the very advocates of Proposal 52 during the course of many previous hearings as well as referenda on orders, as promulgated or as amended, to provisions for payment of farm location differentials which have themselves remained unchanged in intent and in result for nearly a quarter of a century. The payment of such differentials can also logically be interpreted as the custom of the milk business provable as presumably presupposed in New England federal orders, whether now or later.

The meaning of the past participle of the word "apply" is also of paramount significance and the definition of the very follows:

[4024] 1. To place in contact; to put or adjust (one thing to another);–with "to", as to apply medicaments to a diseased part of the body.

2. To put to use; to use or employ for a particular purpose, or in a particular case; to appropriate, allot, devote, as to apply money to the payment of a debt.

3. To make use of, connect with, or pronounce, as suitable, fitting or relative; to bring to bear on; as, to apply the testimony to the case; to apply an epithet to a person.

4. To engage or employ diligently or with close attention; as, to apply oneself to a task.

5. Now rare. (not in our opinion applicable or pertinent.)

6. Obs.

7. Astrol.

In applying our testimony to this case we are sedulously avoiding the application of any epithets to any persons, but state categorically that a higher rate of payment to nearby producers for milk was in origin a difference in rate of payment which, by usage, practice and convention, was suitably and fittingly made use of and was connected with such milk by handlers. The orders have therefore, in incorporating and maintaining provisions for "farm location differentials", truly

and justly recognized [4025] them as a translation of "market . . . . differentials customarily applied." The practice of making such payments has now an even more considerable status as "unwritten law" and certainly does not lack for authority on the grounds of "long consent". It is furthermore a usage which may well have acquired by long continuance "a legally binding force", and we will, if necessary, pursue its certification as such.

A statistical comparison of the prices received, under the four New England orders whose marketing areas cover portions of Massachusetts, by producers in the 46 cent farm location differential zone with those received, under pricing orders of the Massachusetts Milk Control Commission, by other Massachusetts producers will show, not only the continuing validity of the farm location differential payments, but also a strong case for an increase in such rates. Table I of Exhibit 93 lists city plant prices for Class I and Class II, by months for 1962, together with the blended prices payable to 46 cents zone producers; it also shows, for the same periods, the Class I and Class II prices applicable in markets administered by licensed milk dealers in such markets. Finally, this table sets forth the range of difference between the first and second series of prices. A simple average of the amounts which define the upper and lower limits of this range shows that prices under the state order exceed those under federal orders by $.214 to $.493 [4026] despite the fact that the federal order prices already give effect to existing farm location differential payment provisions.

Table II of Exhibit 93 shows the extent to which producer receipts were assigned to Class I over the same period in the same markets and through indication of the high and low months of utilization, points up the relatively high degree of seasonal variation in production in federal order markets as opposed to the state market as a whole. This obviously accounts, at least substantially, for the higher prevailing prices to producers in the latter market.

As an adjunct to this I would like to submit another table which is headed "Worcester County Price Study" and which

covers the difference in price between the average composite price paid under price orders of the Massachusetts milk control commission to Massachusetts state producers in Worcester County selling to licensed milk dealers there in the period starting November 1956 through July 1959. The pertinency of these is to indicate a prior base of price in Worcester County in an area which is now substantially part of the marketing area for the Worcester order.

This is exactly the same type of table for a prior period of rather the figures in it, particularly the column headed "difference" is arrived at in the same procedure as the comparison for the years of 1962 for the state [4027] average. Composite price as a whole were the federal order nearby prices and the orders as listed except this has specific application to the Worcester order only.

There is no source indicated at the bottom of this table and I will state for the record it is the records of milk control commission of the Commonwealth of Massachusetts for the period shown.

EXAMINER HOLSTEIN: Did you yourself take these figures from those records, Mr. Sykes?

THE WITNESS: No, they were reported to me. Incidentally to identify this even more specifically the Massachusetts Milk Control Commission prepares for the University of Massachusetts, particularly for Ellsworth W. Bell, the Extension Economist, an average composite price paid by licensed milk dealers in Massachusetts to milk producers in the state order markets. That figure Professor Bell uses in a price tabulation which he includes in the monthly issue of what is known as "The Dairy Digest" and it appears in that publication under the title, "other markets." That figure is identical to the figure used in Table I of Exhibit 93.

It is also reported to me, and would be to anybody else who asks for it, what the prices have been by counties or by groups of counties. In other words, this is not something that is necessarily done specifically for me alone, anybody [4028] who asks for the information could get it. At the time that this third table was prepared we were follow-

ing very closely the differences between the city plant nearby price and in the Worcester order compared with the prices that producers outside the order were receiving in Worcester County.

Incidentally this table was submitted as part of our testimony in the 1959 hearing, which final decision was rendered, I believe—well, during the summer of 1960 and took effect on September 1, 1960.

EXAMINER HOLSTEIN: The document just described by Mr. Sykes is marked Exhibit 94 for identification.

(Exhibit Number 94 was marked for identification.)

EXAMINER HOLSTEIN: Does that complete your statement, sir?

THE WITNESS: It does, sir.

EXAMINER HOLSTEIN: Are there any questions?

Mr. Chernauskas.

CROSS EXAMINATION

By Mr. Chernauskas:

Q. Mr. Sykes, I would like you to assume that the city of Gardner, which is in the Worcester order, was part of the federally regulated marketing area for a period of say twenty years hypothetically. Is it your contention that because the city has been customarily in the federally [4029] regulated area and has customarily been treated as a regulated area that there has resulted upon it a legally binding force which would prevent the Secretary from exercising the instructions in the Act to make his determination as to whether any particular item in an order tends to effectuate the purpose of the Act. A. I cannot answer that question yes or no, Mr. Chernauskas, because it appears to me you started off with a specific thing that involved the inclusion of a community in a marketing area and then asked me whether my interpretation of the word "customary" would prevent the Secretary from exercising any jurisdiction over any provisions in the order. It seems to me that is a far broader question than it started out to be.

Q. Let's restrict it say to removing the city of Gardner from the order. A. I don't think that any interpretation of the word "customarily" would carry of itself the entire weight

in making such a decision but I will say that here again is a question of my expressing an opinion as to what the Secretary would do, but if I am entitled so to do I would think the fact that it had been in a regulated area for as long a period as you describe would help considerably in determining whether or not it remains.

Q. Actually isn't it true that whatever must be done [4030] with regard to a provision or an order program under the Agricultural Marketing Agreement Act must be done in accordance with the terms and provisions of the Act itself rather than some– A. No. My interest here, Mr. Chernauskas, is in connection with whether there has been considerable use of this word "differentials"; "customarily applied." I am interested in what the exact meaning of these words by, I would say, competent authority. I also have had some recourse through counsel to what might be any definitions in legal dictionaries which might be at variance with this and we find nothing substantial that is listed for either of these three words that is different in intent.

EXAMINER HOLSTEIN: Is that all?

MR. CHERNAUSKAS: Yes.

EXAMINER HOLSTEIN: Any further questions?

Mr. Tipton.

By Mr. Tipton:

Q. On the first page of Exhibit 93 you say, "The facts are that, during the time antecedent to the inception of federal regulation, milk dealers were paying more for nearby milk than for distant milk."

Then you go on and say "not necessarily because of its intrinsic value"– A. That of is supposed to be erased out of there.

[4031] "Because its intrinsic value as milk was greater but because of its geographical origin."

Q. Could you tell me what items related to its geographical origin that contributed to the higher price that was being paid for nearby milk as was being paid for up country milk? A. All I know about this situation, Mr. Tipton, is what appears to be obvious, and it appears to be obvious to me from

an examination of the exhibits that are in so far that it was not necessarily a question of intrinsic value—in other words, it character as milk—but primarily because of its geographical origin. You think I used here the words, "geographical" to avoid repeating "local". Or "nearby" too many times but the implication I think is quite clear that what I am referring to is the nearby purchases and being nearby it has to be because of geography and geographical location. I mean I think it is implicit in the word.

Q. But my question really dealt with what about this geographical origin that contributed to handlers paying more for milk in this geographical origin as you described here as to more distant sources? A. What I mean by this statement, Mr. Tipton, is that it was there and there geographically and that the facts, at least as far as we are concerned, show that a higher price was being paid for it. That is all I am [4032] saying.

Q. I am asking though what contributed to this higher price being paid? A. I have not made any statement that I know of about that.

EXAMINER HOLSTEIN: Well, if you don't know, you can say so.

THE WITNESS: I didn't make any statement as to contributory factors.

EXAMINER HOLSTEIN: Well, the cross examination, Mr. Sykes, is not necessarily related to the exact words that you used. The cross examiner can ask you what you meant or ask you if you have any knowledge of matters related to what you meant and that is what Mr. Tipton is doing. He wants to know if you can tell him the factors that entered into this higher payment or nearby milk or milk of a geographical origin or whatever term you want to use.

THE WITNESS: No, except the fact that apparently they were receiving higher prices prior to order inception.

By Mr. Tipton:

Q. Then how could you come to the conclusion that it was not because of intrinsic value but was because of geographical origin. A. Mr. Tipton I said not necessarily because of intrinsic value.

[4033] Q. I will insert the word "necessarily" in my question. A. It does not seem to me that the exhibits that are in so far necessarily specify that there was some different character from a nutritional standpoint or some other standpoint that would be intrinsic to the milk from different locations. That is the only point I am trying to make.

Q. Well, in the next sentence, you say, "This higher rate per hundredweight was not arrived at by milk dealers then through the process of computing a distant price and adding thereto a premium or differential in order to arrive at a final figure."

Now I think that statement probably stands correct. However, did not these handlers arrive at the price at which they were willing to pay for the nearby milk by comparing that to a price at some other sources? A. I think undoubtedly being big men they assessed the economic situation, yes, if that is what you mean.

Q. And they paid a higher price for milk from nearby sources as compared to milk from more distance sources for some reason, is that right? A. They must have had some reason, yes.

Q. Well, can you tell me some of the reasons you think it might have contributed to that higher payment?

MR. MAHONEY: I will object on the basis this question has been asked at least once before if not twice before.

[4034] Unduly repetitious.

EXAMINER HOLSTEIN: In all fairness I don't think it was, until he gets an answer it is not repetitious.

MR. MAHONEY: I would submit, Mr. Holstein, that it has been answered, that the witness does not know of any specific reason. He has stated that this situation did in fact exist but he knows of no reason, and again Mr. Tipton asks him what reason is that?

EXAMINER HOLSTEIN: Well, I will overrule the objection and let the question be asked just once more.

You may answer it, Mr. Sykes.

THE WITNESS: May I have the question read?

(The question referred to was read by the reporter.)

THE WITNESS: No, I have no knowledge of the individual reasons that each individual handler might have used in arriving at this price. I make no assertion that I do know.

By Mr. Tipton:

Q. That was not my question really. I just asked do you have any reasons? A. No, I don't know of any and I am not offering any reasons.

Q. If federal regulations were to so disappear in these orders now, do you think a handler located in Boston and receiving milk from farmers located in a distance of within 40 miles of Boston and was receiving milk from [4035] up country sources more distant and had received this milk in his plant and was in his vat and it was of exactly the same quality, would he pay any difference due to—do you think for either one of the sources?

MR. MAHONEY: I will object to this. It really presupposed a situation which in fact does not exist, and the statute itself, is specific differentials customarily applied.

EXAMINER HOLSTEIN: The objection is overruled.

THE WITNESS: May I ask for clarification, Mr. Tipton? In each instance is the milk received producer milk?

By Mr. Tipton:

Q. Yes. It is in the vat of the handler, yes. The handler has it in his plant. Both is priced f.o.b. the handler's plant. A. And the question is would he pay any more for the nearby milk in the absence of federal regulations?

Yes, I think it is quite likely he might.

Q. Why do you think that he might? A. Well, this would depend in my estimation to a great extent on what the individual business situation of the handler to how many you were referring is. He might for instance have distribution that was quite compatible with the supply and he might feel quite strongly that he had a business in economic interest in securing a supply from the [4036] area in which he did business. Now that is one reason which might contribute.

Q. Do you have any others? A. Yes, because of not necessarily specified that this is regular supply from both sources and I would assume the possibility that in connection with

this that the up country milk directly received might be in the nature of supplemental supply.

Q. So now we must assume that they are both regular sources? A. I still think it might apply.

Q. What might apply under that assumption? A. The higher price of nearby producers.

Q. Why under that assumption?

MR. MAHONEY: I will object on repetition again.

EXAMINER HOLSTEIN: No, this question is not repetitious, this particular last question is not. The objection is overruled.

THE WITNESS: I can think of a number of reasons that might be applicable, Mr. Tipton. I don't know what weight they have. We can say that he is more satisfied from the quality standpoint with the nearby milk–

By Mr. Tipton:

Q. We had assumed that quality was the same. A. I didn't understand that. I thought this was [4037] two different sources of milk in the same vat and then would there be, would there be circumstances under which he would pay more for the nearby producer milk and then why would he be doing it?

Q. I had specified quality exactly the same. A. Oh, it might be because his nearby production was all located in the same community in which his plant was and that he felt that a good pay scale to nearby producers kept them in business and had the effect of keeping the tax rate in his community down. You are asking a very hypothetical question and I am forced to give a hypothetical answer to it.

Q. Do you have any other reasons? A. Yes. I can say one thing that might have very definitely an application and that is that the greater accessibility of the milk to him might make it possible for him, we will say, if this were a bulk route to pick up some of his nearby producer milk at very short notice when he turned out to be running short or let's suppose there was some off labor in the up country milk of equal bacteria standards and he might be on a sport where he had to lay his hands on some milk quickly. In the case of a bulk

route operated every second day he always has the recourse of making a single day pick up in order to provide himself with milk that he absolutely requires on the spot.

Q. Of course you realize that my question specified [4038] of course you realize—specified that the milk was in the vat of the handler of equal quality in the city plant? A. Then we are dealing with a single instance on a single day.

Q. Start from that one. A. Well, all right. He has all the milk in the vat and he goes to bottle it or he has bottled it and somebody suddenly realizes it is off flavor, has nothing to do with the bacteria count whatever.

EXAMINER HOLSTEIN: Mr. Sykes let's be fair to Mr. Tipton. He stated two or three times the milk was of equal quality. None of it is off flavor. That was a condition that is part of his hypothetical question and he is entitled to an answer to the question that he gave.

THE WITNESS: I might say that the milk industry as far as I know it there is a considerable variance in what the word "quality" applies to, and if I have misinterpreted Mr. Tipton's usage I apologize.

We will take the fact that it is all pure, fresh, wholesome milk at this point and I will still say that he can get a call from the Veterans of Foreign Wars or the Oakmont Country Club to supply an order the following morning and he does not have enough milk for it and he still has greater accessibility to his nearby milk to fill unexpected demands for his bottling appointments.

[4039] By Mr. Tipton:

Q. Let's assume he picked up the morning milk and has delivered all the morning milk from his producers and all of a sudden he gets an order from wherever you said for additional supplies of milk. Now where would he get those additional supplies of milk? A. By sending his truck—not his truck necessarily, his truck or the truck that picks up his bulk route, and picking up milk at seven o'clock at night.

Q. But he needs it at 3 o'clock in the afternoon or 2 o'clock in the afternoon. A He has already picked up. He can go out and pick up whatever happens to be in the tanks.

Q. He possibly can, and possibly more logically he can call a broker or call some other dealer and ask for a supply of milk? A. I don't know what he would do. You asked me in what circumstances he might consider that the nearby milk had greater value. I am giving you one instance in which I think he might.

Q Let me ask then what would be the normal procedure of a handler that had picked up all the milk from his producers on one day and at noon he decided he needed an additional supply of milk and he needed the milk shortly thereafter. What would be the normal procedure of handlers [4040] in the market? A. I would say that one normal procedure certainly would be to contact another handler and see if he had some additional milk to sell.

Q But going back now still to the original question milk in a vat in the handler's plant of equal quality, he knows that part of it came from nearby sources and he knows that part of it came from more distant sources, the milk is in the vat. Do you think that the handler would be willing to pay more from the nearby milk than for the up country milk? A. I have already answered that question in the affirmative.

EXAMINER HOLSTEIN: Yes, the witness has said yes and he has given you two samples.

Mr. Tipton.

May I point out that the difficulty you are having is because you are trying to get the witness to agree with you and of course he won't. You are in the position of making your argument and you should put it in your brief. I am not trying to restrict your cross examination but this is largely the responsible factor for this long hearing.

MR. TIPTON: I am sorry if I contributed to that.

EXAMINER HOLSTEIN: You are not the only one. I believe everyone here contributed to that. I believe half of these questions were arguments that should appear in the [4041] brief. So is Exhibit 93 and I will have to say about that in a minute.

By Mr. Tipton:

Q. Could you explain for me the sentence beginning with "within the concept of the legal section of the definition" on

page 3, the last paragraph, and that is the first part of the second sentence. Where I have trouble I guess is where you get down to acquiescence. A. I am having trouble locating the sentence to which you refer.

Q It is on page 3 and it is the second sentence of the last paragraph on the page, "the frequent and continued acquiescence, jointly or severally, of the very advocates of Proposal 52." A. I know of no instance, and in cross examination I asked you if you knew of any instance in which any of the cooperatives which you represent have voted against an order in referenda on an order which contained nearby farm locations differential payment provisions.

Q. That is what you mean by that sentence? A. That is exactly what I mean.

Q. Now you have some figures showing the prices paid by the milk control commissions—or not the milk control commission but by handlers who are regulated by the state orders in Massachusetts. Do you know the auditing [4042] process of the milk control commission of handlers which they regulate? A I know that the director of Milk Control, Mr. Bond, testified there in answer to this same question and the compensatory price hearing which was held August 28th and August 30th of 1962 and I know that it is conducted on a quarterly basis by virtually his statement, that this is conducted on a quarterly basis by what are considered to be competent auditing personnel.

Does that answer your question?

Q. Well, do they perform an audit which you would think is equivalent to the audit performed by the market administrator's office? A. I am not going to abrogate myself in a position of determining the difference in quality if any between two audits.

Q. Do you know, does the state auditor have any jurisdiction or require a handler or not allow a handler to make any specified amount of deductions? In other words, could a handler under the state order deduct from the price that is announced a charge for transportation of the milk considerably in excess of what it might normally cost? A. I would

say, Mr. Tipton, that the provision of official order 3(g) ol issued by the milk Control Commission under the authority of Chapter 94 A, [4043] General Laws of the Commonwealth, specifies in particular each transportation charge is subject to the approval of the direct of Milk Control.

Q. Do you know the producers actually receive as compared to the prices which you portray here in these exhibits? A. Do you mean of each individual producer that is involved in this computation?

Q. No, in general how much less if anything less or is this the price the producer actually receives or how much less would he get? A. Well, the same extent that the blended price under the orders reflect the price which the order specifies it—the uniform price and to the same extent these prices reflect what the milk control commission determines is the price payable on the basis of its class prices by utilization by the handler. Now to the extent the deductions are made the thing is the same under the order as it is under the control commission as far as I can see if it is an authorized deduction.

Q. Well, what kind of a basis does the Milk Control Commission use?

You said he reviews transportation losses. What kind of a basis does he use in determining whether a transportation allowance is acceptable or unacceptable? [4044] A. Well, in his opinion as far as I know whether it is equitable considering the distance involved and the quantity of milk involved and the general operations for instance of this the bulk trucker. It would also apply to routes where the milk dealer is handling his own truck in order to pick up canned milk. Of course it would not apply in the case where producers are hauling their own milk to the plant.

Q. You mentioned in your statement on page 5 that "One of the reasons for the justification of it is the more even seasonality of production of the producers in the nearby area." A. That is not what I said.

EXAMINER HOLSTEIN: The witness says that is not what he said.

By Mr. Tipton:

Q. I am sorry. What did you say?

Well, do you think that a more even seasonality of production of producers in the nearby area constitutes a reason for justification of the nearby differential? A. I didn't so state but I think it might be contributory to the entire situation, yes.

Q. Do you contend that a producer in the nearby area because he has a more even seasonality should be entitled to a differential while the producer in a more distant [4045] area having the same seasonality of production should not be entitled to the differential because he is not within what is designated the nearby area. A. No, I have not offered this as a reason, Mr. Tipton.

Q. I thought you said just a minute ago you thought this was a reason for justification? A. My direct statement here, Mr. Tipton, includes a comparison of prices paid in 1962 under the state order compared with the prices paid at city plants to producers in the 46 cent zone for the various markets listed and I have then made a simple statement that the utilization which is shown in table II is a contributory factor to the extent that the state order prices currently are still higher than the order blend prices to producers in the 46 cent zone at city plants. That is all I said.

Q. Do you think that a more even seasonality of production of producers in the nearby area constitutes a reason for them receiving a nearby differential? A. No, not in itself. The whole case for the 46 cents and the 23 cents as far as I am concerned is the fact that that was the situation, of higher prices prior to order and in translating them to a market wide pool, I can see no other way in which the price justification could be reflected without other provisions than the farm location differential provision.

[4046] MR. TIPTON: That is all.

EXAMINER HOLSTEIN: Any further questions?

Mr. Cutting?

By Mr. Cutting:

Q. Mr. Sykes, I would like to refer to table 2 of your exhibit for just a moment. You have shown in this table com-

parisons of 1962 percentages of assignment to Class I for the Boston, Springfield, and Southeast New England orders and the state control areas. Comparing these percentages of Class I utilization we find that the state order percentages are considerably higher and comparing them with order 7 which seems to be the highest utilization of the federal order areas I find it is approximately 15 and a half percent higher. Would this in any way be interpreted that the state controlled areas surrounding the federal order areas are relying on the federal order areas to balance their supplies? A. Not necessarily, no. I don't think that is a fair general inference, no.

Q. Is it possible that this might reflect that certain dealers under state control would be making a very high utilization of their local production in balancing their supplies to purchases or totally unregulated milk from nearby and northern New Hampshire? A. I think in certain instances it is possible, Mr. Cutting, [4047] yes.

Q. Do you know of any producers in this general area, Massachusetts producers in this general area, who have switched back and forth to any extent at all from handlers regulated under federal orders to or from dealers regulated by the state A. I am bothered a little bit by switched back and forth. How many switches are we talking about?

Q. Any switches? A. Yes, I know of some.

Q. Do you know of any bulk tank– A. I know of some both ways, excuse me.

Q. Do you know of any bulk tank loads of milk which might have normally been utilized by state control dealers who are now moving on the federal order market? I am making specific reference to a load that I believe is or was hauled by a trucker by the name of–he hauls for Newton, you know who I am talking about. Crocker. A. Well, you are going quite a long distance back Mr. Cutting, and I think if I am correct your reference is to a load of milk originating in from producers in New Ipswich, New Hampshire, Ashby, Massachusetts; Lunenberg, Massachusetts; and Leominster, Massachusetts. That was formerly in some instances for over 25 years, was delivered to a plant known as the Clover Hill

Plant in Lunenberg. Is that the load [4048] to which you are referring?

Q. Possibly, yes.

To refer back to your answer to my previous question for a moment that you knew of some transfers or switches by producers to or from federally regulated handlers, to or from state regulated handlers, does this in any way reflect the supply requirements of the state regulated handlers? A. Well, I thought I indicated, Mr. Cutting that I know switches which have occurred in both directions, not only from federal order markets into state order markets but also vice versa. I know of some from state order into federal.

Q. But my question was have any of these shifts been indicative of the supply and needs, either over supply or under supply of these state regulated dealers? A. I think among things they could be, yes.

MR. CUTTING: Thank you, that is all.

EXAMINER HOLSTEIN: Any further questions?

THE WITNESS: I would like to complete an answer.

EXAMINER HOLSTEIN: Oh, yes, you may.

THE WITNESS: In answer to Mr. Cutting, he assumed I was through. I wanted to follow it up.

EXAMINER HOLSTEIN: Go right ahead, sir.

THE WITNESS: If Mr. Cutting's reference is to the load of milk hauled by Crocker which formerly was [4049] delivered to the Clover Hill Plant in Lunenberg, the history of that is quite simple because the plant was bought by—I mean the routes of Clover Leaf, Clover Hill, the business was bought by Devine's Milk Laboratory which after the promulgation of the Southeast New England order became a southeast pool handler. The farm location zone in which these producers live was not the 46 cent zone for the southeast order but the 23 cent zone, and this resulted as you can see in a price disparity as far as these producers were concerned and finally resulted in their transferring to Hood in Charlestown immediately after the time that the Boston–Marrimack order merger was completed and the adoption into Boston of the Merrimack Valley 46 cent zone ended up with all of the producers being in the 46 cent zone for Boston.

MR. CUTTING: I have just one further question.

EXAMINER HOLSTEIN: Go ahead, Mr. Cutting.

By Mr. Cutting:

Q. With reference to this situation which I have just described this load of milk presently going to Charlestown? A. Yes, sir, it is, it has been for some time.

Q. Is it made up at the present time of producers who found themselves in this situation that I describe? A. No, not exclusively, Mr. Cutting.

[4050] EXAMINER HOLSTEIN: Mr. Chernauskas.

By Mr. Chrnauskas.

Q. In answer to the last question of Mr. Tipton you seemed to indicate that your impression is that the reason the nearby differential presently is in the order was that the nearby producers when the order came into effect were receiving a higher price. A. Yes.

Q. And that was some what, twenty, twenty-five years ago? A. I used the phrase a quarter of a century obviously for literary purposes but it does apply almost exactly to the Boston Order situation.

Q. And your definition is, I would take it, that you think the words "customarily applies" go back to that period? A. Well, my particular reason for doing this is that the citation from the Act and multiple use of this particular phrase of three words has been used by proponents of Proposal 52, and my desire here is that I contribute a full understanding of what the words actually mean, particularly with references to the word "apply" which does not maintain.

Q. I am wondering then in your opinion, Mr. Sykes, how long do you think the Secretary should continue to customarily apply that differential? Into perpetuity or what? A. I am a little confused here, Mr. Cherauskas, because [4051] I didn't believe that the Secretary was the one that customarily applied.

Q. As I understand your testimony you indicate that the reason we have a nearby location differential is that when the order was put in or prior to the inception of the order producers in the nearby area were historically receiving a higher

price than the ones further out and that the order recognized that fact by calling that higher price a nearby location differential. A. That is right.

Q. And I get it from your testimony that you are applying the phrase "differentials customarily applied" to that situation. A. That is correct.

Q. My question was that it appears then that the reasoning for the differentials goes back twenty-five years and now at twenty-five years hence we still have the differentials, and I am asking you how long should they continue? A. From our standpoint they are part and parcel of the price structure in New England, and if I am in a position to render a judgment on this I will say it is good as long as there are any nearby producers to make the milk.

Q. All right. Now historically then, going back twenty-five years, the higher price in the nearby area was paid for certain reasons, I don't know what they are but [4052] apparently higher prices were being paid nearby and lower prices were being paid upcountry and those prices were being paid under the conditions existing then. A. That is my understanding.

Q. Now is it your feeling that those prices should continue to be paid regardless of whether there has been a change in the conditions?

MR. MAHONEY: I assume Mr. Chernauskas means if it were proven that the conditions were changed.

MR. CHERNAUSKAS: I will expound on that a little bit.

By Mr. Chernauskas:

Q. Were there super highways up into the upcountry in 1936 as there are today? Were there tank trucks in 1937 as there are today, bulk tank loads, bulk tank farms?

MR. MAHONEY: Isn't this argumentative?

EXAMINER HOLSTEIN: No, the question is whether a change in conditions should have any effect upon the maintenance or what is known as the—

MR. MAHONEY: I am speaking about the limited access highways and the tank trucks, all those which are common knowledge.

EXAMINER HOLSTEIN: Well, Mr. Chernauskas is merely illustrating what he meant by change in conditions.

[4053] By Mr. Chernauskas:

Q. Was there in 1937 every other day pickup? Was there refrigeration to the extent that there is today? Was there electricity upcountry that there is today? I am asking you are those conditions which should be reflected in considering the pricing situation today? A. My answer to that question is– I don't know which way to answer it. Are they conditions which should be reflected in the pricing situation today? Is that the question?

Q. Yes. Well, let me phrase it different to give you a better prospectus.

EXAMINER HOLSTEIN: He has it.

THE WITNESS: My answer is no, Mr. Chernauskas. I would like to say why.

By Mr. Chernauskas:

Q. Go ahead. A. Because we are dealing with a lot of hypotheses here and I think you are asking me to imagine what should be the case today based on a decision that was made twenty-five years ago on the basis of certain existing conditions, and to me this is a ground rule in the pricing structure which was a basis for the inception of the regulation. Whether or not you would have any ball game at all without the initial regulation is very questionable. In other words, I think we are quite [4054] hypothetical is the way I have to answer that question.

Q. Well, let me ask you this then. Do you think that once a Federal milk order is promulgated and put into effect that the terms and provisions contained in that order should remain without change? A. No, not necessarily. I think it depends to a great extent on the character of the provision to which you refer.

Q. Then if they are changed, they should be changed to reflect the current conditions existing in the area; there may have been some changes from the time the order was put in and should any changes made in the provisions reflect those changes? A. Yes, but to me the question is whether what

you are talking about is a cornerstone of the the initiation of regulation or whether you are talking about something like the provisions of New England, basically Class I pricing formula, which has been changed from time to time for various reasons. I think there is a great difference as to the importance of the individual provision that is involved.

MR. CHERNAUSKAS: That is all.

EXAMINER HOLSTEIN: Any further questions?

Mr. Tipton.

By Mr. Tipton.

Q. Mr. Sykes, in regard to the last question you have made a statement as to whether there was a cornerstone of regulation or something to that effect. Could you probably [4055] not consider the price that the producers were receiving, the exact price the producers were receiving upcountry as a result of the Federal regulation? Was it cornerstone to the Federal order so far as those producers were concerned? A. I think possibly that would be their interpretation of it, yes, sir, but what I am referring to here is the fact that this all started on the basis of an apparently concerted and cooperative effort to stack regulation on some equitable basis. I am fairly well convinced that if this higher price structure which existed at the time was not reflected in the order provisions, I think I am justified in making a hypothecation there might not have been any order at all.

Q. Who paid the differential prior to Federal regulation, producers or— A. If you read my direct testimony or heard me give it, Mr. Tipton, you know I have adopted the position that it never was in fact paid by handlers to producers by such at all.

Q. Who paid the price in the nearby area? A. The dealers who were buying the milk.

Q. Who paid the price in the upcountry? A. The dealers who were buying the milk.

MR. TIPTON: That is all.

EXAMINER HOLSTEIN: See, Mr. Tipton, these last two questions did not establish any facts. Anybody knows that one buys, one sells, one gets paid. I am not trying to lecture

you, [4056] I am merely illustrating the type of question that adds nothing to this record and should be put in the brief.

Mr. Cobb.

By Mr. Cobb:

Q. Just for clarification, do you have a copy of Exhibit 94 there? A. Yes.

Q. In regard to this, I think it is called the Worcester County Price Study, these pounds here, are those receipts from producers? A. Yes.

Q. Where? A. By licensed milk dealers in Worcester County.

Q. All right. A. In the state order area of Worcester County as it existed, then, excuse me.

Q. All right. Now is the second column the state order class prices multiplied by the quantity of milk? A. That is correct.

Q. That is the second column? A. Yes.

Q. I assume the third column then is the average of those two, is that correct? A. That is correct.

Q. Now what is the fourth column? [4057] A. The fourth column is the price paid by Worcester pool handlers to producers in the 46 cent zone, or if there is no intermediate zone the city plant.

Q. This is the Federal order? A. That is correct, what was then an order in 99.

Q. Now the column on the extreme right, the value of the difference, will you explain how you arrived at that figure, please? A. It is Column 1 translated to terms of hundredweight multiplied by the difference between the two and multiplied by Column 5.

Q. All right. I just did not understand it. A. I am sorry. If I had had the time, I would have reproduced this, brought it up through the 31st of August 1960 but I did not have the time to do it.

EXAMINER HOLSTEIN: Any further questions?

Mr. Bridges.

By Mr. Bridges:

Q. I think just a couple short questions.

Getting back to this price structure before Federal order, isn't it possible that because of the accessibility of nearby milk that handlers set a price for nearby milk and rather than paying a premium over upcountry that the price engaged could be nearby and that they would only pay, say, a cent a quart less for the distant milk? [4058] A. That is my understanding, that something like that probably is the case.

Q. Actually it is not the upcountry milk? A. I don't think it was a differential.

Q. That is what I mean, it was gauged to the city price. A. Yes.

Q. Getting back to a question I think Mr. Tipton asked you about the accessibility, are you aware that in many instances when something has happened in a plant, I noticed in the Worcester plant spoiled milk or an accident in the plant, the handler sent out his truck and picked up milk from nearby farms for use that day? A. I know of instances in my own knowledge where it happened.

Q. Regardless of super highways and the bulk tanks, and it would have been impossible to get that milk down from there? A. Yes, I still think there is a substantial time.

EXAMINER HOLSTEIN: When your witness starts to answer the question, don't add to your question. Having asked the question and the witness having started to answer let him finish his answer and then ask another question.

I am sorry I interrupted you now.

THE WITNESS: I definitely think there are instances in which accessibility has been a very prime factor, yes.

[4059] By Mr. Bridges:

Q. And you would agree then that the nearby milk because of accessibility is worth more? A. That is certainly my opinion, Mr. Bridges, yes.

EXAMINER HOLSTEIN: Any further questions?

There appear to be none.

Exhibits 93 and 94 are received in evidence and become a part of the record.

(Exhibit Nos. 93 and 94 received in evidence.)

EXAMINER HOLSTEIN: I am not sure whether I received Exhibit 92 which was Mr. Garelick's testimony. If I did not, Exhibit 92 is received in evidence and becomes a part of the record.

(Exhibit No. 92 was received in evidence.)

EXAMINER HOLSTEIN: I might point out not by way of criticism but merely by way of information that most of what is in Exhibit 93 is argument. I know that Mr. Sykes stated that the reason he quoted so fully from the dictionary is because he wanted to avoid asking that official notice be taken of what is stated in Webster's Dictionary. That is not necessary. You may quote from the dictionary, from the Bible, from any case in any recognized court of record, either state or Federal, in your brief without asking that official notice [4060] be taken. The Secretary will of course always take official notice of recognized dictionaries, the Bible and other cases and other cases in Federal or state courts.

As I see it, and again I am not criticizing but I am merely pointing out the type of material that should be put into a brief. Exhibit 93 is a very lucid exposition of Mr. Sykes' position but much, if not all, of it is argumentative; very little, if any of it, has any factual material but refers to other facts and draws conclusions from those facts. That is the type of material that should be put in a brief.

The testimony offered in proceedings of this kind is written because it is rather voluminous and quite detailed, but that does not make it a bit different than if it were given orally without being read from a prepared statement. If this were being given orally by Mr. Sykes or anyone else without reading from a document, it would be subject to objection by virtue of the fact that it was argumentative and the objection probably would be sustained.

However, I did not want to interrupt Mr. Sykes' presentation. I am sure the Secretary wants to consider Mr. Sykes' position as he does the position of all witnesses here but this should be in the brief. I would advise you, Mr. Sykes, to put it in your brief and the Secretary will pay more attention to it than if it is incorporated in the testimony.

* * *

[1426] WILLIAM E. FLYNN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT TESTIMONY

EXAMINER HOLSTEIN: State your name for the record, your address, and whom you represent, sir.

THE WITNESS: William E. Flynn, Post Office address North Bennington, Vermont, producer in the Boston market for over 45 years, representing a small independent called the Independent Cooperative Association, Incorporated.

* * *

[1431] THE WITNESS: In regard to farm locations, the Administrator's report itself, last month, disclosed that $44,000 was deducted from the pool for the purpose of paying, as I understand it, the 48 cents and 23 cents from location differential.

Now, this deduction was taken from the pool of all producers and paid in as a bonus to those nearby producers in that area.

It gave a higher income to them, and if my arithmetic is correct, it also took 3 cents away from all producers and all other producers. It is my contention that they at the present time need this money more than the nearby producers.

It will also defeat the purpose of the order in uniform prices.

* * *

[1437] Q. And you made a computation of your own which showed that if this money had not been deducted, the price to your producers would have been increased by 3 cents. And I think you followed that by a statement that the more distant producers need it worse than the nearby producers.

Did you ever own or operate a farm in Massachusetts Mr. Flynn? A. No, I have not.

Q. Then this is a matter of opinion and not necessarily the result of some statistical computation with cost of production in one area against cost of production in another area, is that correct? A. In a way, but I won't entirely agree with that.

There are other elements that are taken into consideration there. The fact that quite a few of your Massachusetts farmers come out and the forage from our territory, and we have [1438] heavier expense, and you have a higher price that way, by virtue of lower freight charge, and sometimes direct plant trucking. I think these enter into consideration. One producer's cost of production differs. The cost of production of a producer in the same territory differs. You know that. It depends on the farm and everything else. When you go into cost of production, that is my opinion. But there are other elements to be considered there.

* * *

TESTIMONY OF MR. WELTS

[4501] Another defect in the present system that sometimes creates dissatisfaction and a feeling of injustice on the part of the producer is that it tends to discriminate between producers who are essentially similarly situated. Producers located in the same town have a community of interests, including a uniform tax rate and basis of assessment of their farm property. It seems more logical that all producers in a town, or none, receive a differential based on farm location, than that producers in each boundary town be split into two groups, one of which has a permanent income advantage of one-half cent per quart over the other on all milk deliveries to the Boston market.

It seems to me that these disadvantages of the arc-type boundary are sufficient to require a change from it, particularly if the change can be accomplished in a way that does not take away an existing farm location differential advantage from any producer who delivers his milk to the Boston market, and does not create a windfall for a large [4502] number of producers, and does not substantially disadvantage the great majority of Boston market producers who receive no farm location differential at all.

* * *

[4505] Exhibit 106 indicates that if my recommendation were adopted the boundaries of the respective differential areas would be extended to encompass all of the territory within the boundaries of the twelve "40-mile" towns listed on page 2 and nine "80-mile" towns listed on page 4 of Exhibit 106. These expansions of the respective differential areas would result in the inclusion in the 46 cent areas of a total of nine producers now in the 23 cent area, and the inclusion in the 23 cent area of a total of seven producers now outside of any farm location differential area.

I believe that this slight increase in the number of producers receiving an increased farm location differential is considerably outweighted by the advantages of getting away from the difficulties I previously mentioned as being associated [4506] with arc-type boundaries.

* * *

[4258] TESTIMONY OF JOHN ADAMS

was called as a witness and, having been previously duly sworn, testified as follows:

DIRECT TESTIMONY

THE WITNESS: My name is John Adams and I am representing New England Milk Producers Association, Northern Farms and Maine Dairymen Corporation.

My testimony relates to Proposal No. 21. I do not [4259] propose to re-examine the basis or justification for the use of farm location differentials or of nearby differentials as they are more commonly known under the five New England orders.

When the Boston, Springfield, Worcester, and the former Merrimack Valley orders were originally issued, certain nearby differential areas were defined which appeared to be appropriate in terms of existing condition in each of the various markets. The provisions for nearby differentials payable to producers whose farms were located in certain defined areas

recognized existing price relationships and supply areas, and competitive relationships between markets.

Most of the milk was delivered in cans, which tended to limit the distance over which it could economically be transported. The scope of operations of individual distributing plants was comparatively limited, and generally confined to a single, well-defined marketing area. A considerable degree of overlapping existed between the differential areas as defined under the various orders, and the milk of producers moved almost entirely to the markets with which it would logically be expected to be associated.

To the extent that variations existed in the definitions of the differential areas, they appeared to be justified, and to create no serious problems in the marketing of milk. [4260] Supplies of milk were generally well adjusted in accordance with the differential areas as defined under the various orders, and primarily on the basis of relative hauling costs to one or another market.

A number of important changes have occurred in recent years, all of which indicate the need for coordination of the pooling, classification, and assignment provisions of the various orders which was accomplished by amendment effective September 1, 1960.

One change has been the very substantial conversion to bulk tank delivery, which has made it possible to move milk over longer distances from farm to market, and to move it to different markets. Another has been the issuance of two new Federal orders covering the large markets of Southeastern New England and Connecticut. The differential areas as defined under the two newer orders are well coordinated with each other, but were not well coordinated with the comparable areas as defined under the three older orders, and probably could not have been, since amendments to each of the five orders were not then up for consideration. Another development has been the closing and consolidation of distributing plants, with the remaining distributing plant(s) now serving more than one market.

Finally, there is the possibility that such a plant may shift between markets, for purposes of regulation, on a [4261] month-to-month basis, depending on where the greater proportion of its milk is distributed. These changes, coupled with the lack of uniformity in the definitions of the differential areas under the various orders, in recent years have had serious disruptive affects on the marketing of milk or producers in southern New England. The lack of uniformity in the differential areas under the various orders has tended to create a number of tight compartments which impede the marketing of milk, or the readjustment of supplies between markets, in response to shifts in sales, or shifts in the applicable order regulation.

A number of illustrations can be given, and I have not attempted to arrange them in precise chronological order. Soon after the issuance of the Connecticut order, Sealtest decided to discontinue operating its distributing plant in Springfield, and to supply its outlets both in Springfield and Connecticut from another of its distributing plants located in Hartford.

Sealtest thereupon ceased to be a pool handler in Springfield, and its Hartford plant continued to be operated as a Connecticut pool plant. Its Springfield plant had been receiving a considerable quantity of milk for many years from producers located in Hampshire and Franklin Counties of Massachusetts, and the handler would have liked to continue to receive this milk at Hartford.

[4262] The producers, however, were located in the 46 cent differential area under the Springfield order, but in the non-differential area under the Connecticut order. We were forced to re-market the milk which the handler had been receiving for many years in Springfield, and to transfer other milk to Sealtest from producers whose farms were located in eastern New York, and which had previously been received by another Springfield handler. In this case, it was possible to effect an approximate substitution of supplies, but only by disruption of long established relations between two groups of producers and the handlers who had been receiving their milk.

Pioneer Dairy is another former, and smaller, Springfield

pool handler, with a plant located in Southwick, Massachusetts, who acquired sufficient store outlets in Connecticut to cause it to be regulated under the Connecticut order, rather than the Springfield order This handler, also, had been receiving milk from producers in Hampden or Hampshire Counties of Massachusetts, most of whom were located north of the Massachusetts Turnpike. These producers also were located in the 46 cent differential area under the Springfield order, but in the non-differential area under the Connecticut order.

When Pioneer Dairy ceased to be a pool handler under the Springfield order and became subject to regulation under the Connecticut order, it was necessary for us to re-market the milk of these producers, and for Pioneer Dairy to find a [4263] new source of supply. If the handler should lose his store outlets in Connecticut, he would probably revert to regulation in Springfield. In effect, the handler needs two sets of producers, one for Springfield and the other for Connecticut.

Some time earlier, the Whiting Milk Company had discontinued the purchase of milk from a group of producers in the general vicinity of Northfield, Massachusetts, which had formerly been received at its Worcester plant. This milk is currently being received at our Worcester plant. It is high quality milk, and entirely in bulk tank. On several occasions, we could have re-marketed the milk in Boston, except that the producers are located in the 46 cent differential area under the Worcester order, but in the 23 cent differential area under the Boston order. Following the issuance of the Southeastern New England order, we could have re-marketed the Northfield load to a handler under that order, except for the same reason. The handler in this instance ended up by going into eastern New York to obtain a milk supply directly from producers, where the "tight compartments" to which I referred do not apply.

EXAMINER HOLSTEIN: The time has come when we must vacate this room. We will reconvene in the Empire Room just off of the main lobby.

(Whereupon, a short recess was taken.)

[4264] EXAMINER HOLSTEIN: The hearing will please come to order.

Let the record show that we are convened in the Empire Room and an announcement to that effect was made before the recess for the purpose of moving to this room.

You may proceed, Mr. Adams.

THE WITNESS: In recent years the Whiting Milk Company has also been engaged in closing and consolidation of its distributing plant operations. The handler has discontinued operation of its former distributing plants in Providence and in Worcester, and its sales in these markets are now supplied from its Boston distributing plant. The Whiting plant in Providence had received milk from producers located in Rhode Island and eastern Connecticut. The plant in Worcester had continued to receive milk from producers located in Worcester County. All of this milk was also in bulk tank.

Whiting would have liked to continue to receive both lots of milk at its Boston distributing plant, but the producers in both instances were located in the 46 cent differential area under the Southeastern New England or Worcester orders, but in the 23 cent differential area under the Boston order. We were able to re-market the milk of the producers located in Rhode Island and eastern Connecticut with another Southeastern New England handler. The milk of [4265] the former Whiting producers located in Worcester County has continued to be received at our plant in Worcester, and the same problem would arise in attempting to re-market this milk, say in Boston or Southeastern New England, as referred to in connection with the Northfield load.

When the Southeastern New England and Connecticut orders were first issued, some conflict existed in the classification and assignment provisions with respect to movements of bulk milk between Boston and either of the other two markets. To put itself in a more favorable position to continue to supply certain outlets for bulk milk to handlers in Southeastern New England and Connecticut, Deary Bros. for a time operated a plant at Putnam, Connecticut, as a supply plant under the Southeastern New England order, for the receipt of

milk from producers located primarily in eastern Connecticut.

Subsequently, the classification and assignment provisions of the various New England orders were coordinated in amendments to the various orders, effective September 1, 1960. This removed the original reason for operation of the Putnam plant as a supply plant under the Southeastern New England order. Deary Bros. would then have liked to transfer these producers back to their distributing plant located at Webster, Massachusetts where the milk had previously been received.

The same series of amendments, however, provided [4266] for a substantial expansion in the definition of the Worcester marketing area, with the result that the Deary Bros. plant at Webster, Massachusetts, became subject to regulation under the Worcester order. Insufficient attention had been given to the need for corollary changes in the differential area to accompany the expansion in the marketing area, with the result that the producers located in Connecticut, whose milk had temporarily been received at the Putnam plant, but which the handler now wished to transfer back to his distributing plant at Webster, Massachusetts, were located in the non-differential area under the Worcester order. Deary Bros. was forced to continue to receive the milk of these producers at its Putnam plant, until such time as a hearing could be held, and the Worcester order amended, to provide for appropriate changes in the definition of the differential area under that order to conform to the changes in the definition of the marketing area.

Several other small handlers whose plants happened to be located near the Connecticut line, and who became subject to regulation under the Worcester order at the same time, were caught in a similar position. In one instance, a small handler whose plant was located in Massachusetts, and who became subject to regulation under the Worcester order beginning September 1, 1960, received milk from one or two producers located within a mile or half mile of his plant, but whose farms happened to be located across the line in Connecticut. The amendment to [4267] the definition of the differential area under the Worcester order was neces-

sary to correct an obvious inequity, but it represented no more than a piecemeal coordination of the differential areas as between the five New England orders.

The most striking illustration of the need of farm location differential is happening at the moment relative to Deary Bros. and producers shipping to the Hood Company at Providence, Rhode Island. Mr. Deary has testified this afternoon that his plant at Dudley, Massachusetts, will be in the Southeastern New England order during July, August and September as a result of an audit.

This will affect producers north of the Massachusetts Turnpike in the State of Massachusetts. It has placed them in the 23 cent location differential area for Southeast where they have assumed that they would be in the 46 differential area for the Worcester order. In the case of the Hood Company at Providence, Rhode Island, they had notified one cooperative in that area that effective March 1 they would not receive the milk in Providence from approximately twenty producers but if the cooperative could not market this milk they would take the milk at their Charlestown plant, this plant being under the Boston order. Those producers then would either be in the 23 cent location differential for the Boston order or the basic area for the Boston order where they are now receiving the nearby differential in the Southeast order. This has a [4268] serious impact on the milk checks of nearby farmers.

These illustrations are sufficient to indicate the problems that have arisen in recent years, due to lack of uniformity in the definition of the farm location differential areas under the various New England orders. The lack of uniformity has impeded the re-marketing of milk supplies of producers in southern New England, and in many instances such remarketing would not have been necessary except for the lack of uniformity. Where distributing plant operations have been consolidated, or a distributing plant shifts from one market to another, for purposes of regulation, the conflicting definitions of the differential areas have had serious disruptive effects on established marketing relationships between producers and handlers.

On the other hand, it is not feasible to contract the differential area(s) for a market, or a group of markets, when or where they have been long established. We do not think it is practical or equitable to destroy a pattern of prices to producers in New England federal order markets that has existed for years, as an incident to coordination of the differential areas between markets, and it is much more than an "incident" to the producers who might be involved.

In the great majority of instances, the milk of producers whose farms are located in a differential area under one or another of the New England orders would continue to move [4269] in the same way and to the same markets as now. Our proposal aims, so far as possible, at maintaining existing equities of producers and handlers.

Coordination of the differential areas in New England would eliminate the effect of nearby differentials in directing milk to a particular market, or in precluding its movement to a different market. It would eliminate the disruptive effects on marketing arrangements between producers and handlers that result from the closing and consolidation of distributing plants, and the shifting of such plants between markets, for purposes of regulation. Milk supplies would tend to move more freely between markets, on the basis of relative hauling costs, and such differences as might exist in blended prices between markets. Such a system would contribute to natural and orderly marketing conditions, and more efficient handling of local milk supplies.

That concludes my statement.

EXAMINER HOLSTEIN: Cross examination.

Mr. Sykes

CROSS EXAMINATION

By Mr. Sykes.

Q. Is Deary Bros. still receiving any producer milk? A. I do not know.

Q. With reference to the same time and the same hearing, namely, were you referring to the area of Worcester on [4270] December 1, 1950, and in your direct testimony? A Yes.

Q. In your direct testimony you made reference to several milk dealers who became Worcester pool handlers as a result of the marketing area. A. That is correct.

Q. Isn't it a fact that the only other dairy other than Deary Bros. was Rooter's Dairy? A. I can't recall.

Q. With reference to the continued receipt by Whiting of a load of milk from around the Worcester area, isn't it true that there were two loads of milk that Whiting was receiving at its then Shrewsbury plant? A. I believe that is correct.

Q. And that one of these loads was from western Worcester? A. Yes.

Q. And the other was within the 46 cent nearby location differential for Boston? A. Yes.

Q. So that in fact if Whiting had wished to, they could have continued to receive this load? A. They could have.

Q. Are you aware, Mr. Adams, as to the suggestion that has been made on behalf of Worcester Council Milk Dealers that [4271] situations such as the shifting of a city distributing plant on the basis of a small percentage be solved either by pooling the city distributing plant in the marketing area in which it is located or that non-pool election could be made? A. I heard that testimony, yes.

Q. Would this help solve the problem in the case of Deary Bros. if such a provision had been in effect? A. I don't believe so.

Q. Well, to continue that one question further, if the provision had been in effect, the city distributing plant would be pooled in an order if the plant were located in the marketing area with that order, would that not have made Deary a Worcester pool plant in all of these instances to which you refer? A. Under the major proposals we hope that will not be a problem.

Q. Well, to me that is the answer to another question which I have not yet asked.

You don't care to answer the question I did ask, Mr. Adams? A. Correct.

Q. Isn't it true that by virtue of the fact that Deary Bros. was in certain months pooled under the Southeast New Eng-

land order producers north of the Massachusetts Turnpike, even though they were in the 23 cent zone, received a higher [4272] return than the Deary Bros. who had been with the pool? A. I have not checked that.

MR. SYKES: That is all I have.

EXAMINER HOLSTEIN: Mr. Tipton.

By Mr. Tipton:

Q. Wouldn't a merger of the order solve both the Deary problem and eliminate the need for a proposal? A. I believe the merger of Springfield, Worcester and Boston would solve their problem.

Q. And merger of all five of them would eliminate the need for the proposal you have just set forth? A. Probably.

Q. Is part of the justification of your association in this hearing for the continuance of nearby farm location differentials the fact that the farms of these producers were located in a certain locality around a market and historically received some prices that were in excess of prices? Is that true? A. I said in my first statement that I do not propose to read them on the basis of justification for the use of farm location differentials.

Q. I realize that but I am just asking if this is part of the position of your association in this hearing. A. Rephrase the question, please.

EXAMINER HOLSTEIN: Rephrase it?

[4273] THE WITNESS: Yes.

EXAMINER HOLSTEIN: Will you state it another way, Mr. Tipton?

MR. TIPTON: I will try, yes, sir.

By Mr. Tipton:

Q. Is not part of the justification as has been set forth by witnesses in your association for the continuance of the nearby farm location differentials the fact that farmers located in certain areas in relationship to certain markets historically receive prices in excess of prices that were received by farms from other areas? A. Historically they are receiving the same price that they received before Federal orders were originated.

Q. But was this not in relation to a specific market? A. Yes.

Q. Now what has been the change of conditions that would make a farm that was located within the 46 cent differential area for Worcester or Springfield, for example, but delivered its milk to Boston and would thereby either be not in a nearby differential area of any kind or in a 23 cent differential, what has been the change of conditions that would allow him to report a 46 cent differential? A. If he is currently receiving a 46 cent differential, he should not be subject to movement of his farm by distributor sales.

[4274] Q. But he has no historical relationship of having received 46 cents in relation to the Boston market, would he? A. He was in relation to the market where he shipped.

Q. Yes, but not in the Boston market. A. If he is not shipping to the Boston market, no.

Q. Would not the effect of your proposal increase the amount of money that is paid in the form of nearby farm location differentials? A. I have not gone into that.

Q. Well, it is in effect in your proposal. Can't you draw a conclusion from the testimony? A. It would seem to be negligible.

Q. But in each of the cases that you have outlined in your testimony, that would constitute an increase for the amount of money that was being paid in farm location differentials, is that right? A. To some extent.

Q. Well, to every extent. As I understand your testimony it is to every extent, isn't it? A. Yes.

* * *

EXHIBIT 7

[31]

MARKET ADMINISTRATOR - GREATER BOSTON MARKETING AREA

NUMBER OF PRODUCERS

By Farm Location Differential Areas
September 1960 - September 1962

Year and Month	In Nearby (46-Cent) Area	In Intermediate (23-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Total Producers
1960				
September	679	58	8,917	9,654
October	681	56	8,956	9,693
November	670	58	8,944	9,672
December	662	58	8,898	9,618
1961				
January	656	58	8,864	9,578
February	655	58	8,901	9,614
March	666	59	8,923	9,648
April	660	63	8,948	9,671
May	669	63	8,945	9,677
June	660	57	9,007	9,724
July	658	52	9,326	10,036
August	658	46	9,065	9,769
September	649	49	9,109	9,807
October	638	54	9,223	9,915
November	627	54	8,953	9,634
December	631	117	8,798	9,546
1962				
January	619	57	8,566	9,242
February	618	59	8,517	9,194
March	626	60	8,493	9,179
April	623	58	8,613	9,294
May	616	56	8,528	9,200
June	598	61	8,464	9,123
July	641	87	8,123	8,851
August	625	83	8,056	8,764
September	621	85	8,027	8,733
October	617	85	8,444	9,146
November	614	83	8,218	8,915

November 1962

[32]

MARKET ADMINISTRATOR-CONNECTICUT MARKETING AREA

NUMBER OF PRODUCERS

By Farm Location Differential Areas
September 1960 - September 1962

Year and Month	In "Nearby" (46-Cent) Area	In "Intermediate" (23-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Combination of "Intermediate" (23-Cent) and "Distant" Areas	Total Producers
1960					
September	2,927	79	232		3,238
October	2,914	80	241		3,235
November	2,897	78	240		3,215
December	2,817	80	239		3,136
1961					
January	2,819	75	236		3,130
February	2,748	80	236		3,064
March	2,785	82	235		3,102
April	2,784	84	235		3,103
May	2,788	84	233		3,105
June	2,764	84	232		3,080
July	2,743	85	232		3,060
August	2,735	90	234		3,059
September	2,715	91	234		3,040
October	2,698	90	235		3,023
November	2,692	89	231		3,012
December	2,674	90	235		2,999
1962					
January	2,670	118*	218*		3,006
February	2,650	116	215		2,981
March	2,618	115	211		2,944
April	2,585	**	**	247	2,832
May	2,554			246	2,800
June	2,555			244	2,799
July	2,497			185	2,682
August	2,490			182	2,672
September	2,474			180	2,654
October	2,472			181	2,653
November	2,430			178	2,608

* The "intermediate" differential area was extended January 1, 1962, to include all of Berkshire County, Massachusetts. Prior to that date, no differential was applied to milk produced on farms located in that portion of Berkshire County which is north of the Massachusetts Turnpike.

** Producers located in the "distant" area are combined with producers located in the "intermediate" area beginning April 1, 1962, because of the limited number of handlers who received milk from producers located in the "distant" area.

November 1962

[33] MARKET ADMINISTRATOR - SOUTHEASTERN NEW ENGLAND MARKETING AREA

NUMBER OF PRODUCERS

By Farm Location Differential Areas
September 1960 - September 1962

Year and Month	In "Nearby" (46-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Combination of "Intermediate" (23-Cent) and "Distant" Areas*	Total Producers
1960				
September	1,298	1,178		2,476
October	1,291	1,084		2,375
November	1,293	1,082		2,375
December	1,293		1,090	2,383
1961				
January	1,269	1,065		2,334
February	1,263	1,061		2,324
March	1,250	1,050		2,300
April	1,241	1,022		2,263
May	1,232	1,011		2,243
June	1,222		1,010	2,232
July	1,215		661	1,876
August	1,213	905		2,118
September	1,223	746		1,969
October	1,214	724		1,938
November	1,205	861		2,066
December	1,199	942		2,141
1962				
January	1,192	937		2,129
February	1,197	932		2,129
March	1,186	924		2,110
April	1,182	833		2,015
May	1,159	835		1,994
June	1,165	825		1,990
July	1,149	1,019		2,168
August	1,148	1,074		2,222
September	1,137	1,066		2,203
October	1,212	615		1,827
November	1,203	601		1,804

* Producers located in the "intermediate" area are combined with producers located in the distant area because of the limited number of handlers who received milk from producers located in the "intermediate" area.

[34]

MARKET ADMINISTRATOR - SPRINGFIELD MARKETING AREA

NUMBER OF PRODUCERS

By Farm Location Differential Areas
September 1960 - September 1962

Year and Month	In Nearby (46-Cent) Area	In Intermediate (23-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Total Producers
1960				
September	738	42	118	898
October	740	57	110	907
November	740	59	109	908
December	736	58	111	905
1961				
January	734	58	110	902
February	729	58	51	838
March	728	58	54	840
April	730	58	56	844
May	723	58	56	837
June	723	55	67	845
July	730	55	46	831
August	731	54	42	827
September	734	53	54	841
October	730	52	52	834
November	737	52	52	841
December	733	51	49	833
1962				
January	719	50	48	817
February	717	48	48	813
March	710	47	48	805
April	700	47	48	795
May	700	46	46	792
June	689	45	45	779
July	681	43	18	742
August	674	43	15	732
September	672	43	18	733
October	658	41	32	731
November	652	39	33	724

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MARKET ADMINISTRATOR - WORCESTER MARKETING AREA

NUMBER OF PRODUCERS

By Farm Location Differential Areas
September 1960 - September 1962

Year and Month	In Nearby (46-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Total Producers
1960			
September	658	473	1,13
October	651	572	1,22
November	652	578	1,23
December	659	562	1,22
1961			
January	644	557	1,20
February	680	552	1,23
March	682	546	1,22
April	676	533	1,20
May	650	525	1,17
June	659	399	1,05
July	650	307	95
August	652	304	95
September	663	351	1,01
October	667	213	88
November	650	223	87
December	587	149	73
1962			
January	664	221	885
February	659	220	879
March	651	218	869
April	661	223	884
May	655	230	885
June	653	229	882
July	670	357	1,027
August	650	263	913
September	636	188	824
October	572	109	681
November	547	211	758

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MARKET ADMINISTRATOR - GREATER BOSTON MARKETING AREA

RECEIPTS OF MILK FROM PRODUCERS
By Farm Location Differential Areas
(In Thousands of Pounds)
September 1960 - September 1962

Year and Month	In "Nearby" (46-Cent) Area	In "Intermediate" (23-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Total
1960				
September	10,594	690	133,039	144,323
October	10,743	712	135,914	147,369
November	10,027	675	126,879	137,581
December	10,467	701	134,767	145,935
1961				
January	10,794	699	137,229	148,722
February	9,908	647	127,920	138,475
March	11,628	807	159,667	172,102
April	11,746	853	168,783	181,382
May	12,842	948	187,519	201,309
June	12,685	963	193,731	207,379
July	11,828	847	175,415	188,090
August	11,613	784	156,567	168,964
September	10,770	724	157,322	168,816
October	10,884	780	166,273	177,937
November	10,037	738	143,499	154,274
December	11,023	2,322	150,597	163,942
1962				
January	10,938	839	151,090	162,867
February	10,107	765	137,962	148,834
March	11,796	837	166,407	179,040
April	12,005	984	178,918	191,907
May	12,824	1,015	193,418	207,257
June	12,389	1,050	195,428	208,867
July	12,780	1,738	163,567	178,085
August	12,101	1,646	153,875	167,622
September	11,783	1,651	152,595	166,029
October	12,075	1,680	164,319	178,074
November	11,708	1,496	151,326	164,530

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MARKET ADMINISTRATOR - CONNECTICUT MARKETING AREA

RECEIPTS OF MILK FROM PRODUCERS

By Farm Location Differential Areas
(In Thousands of Pounds)

September 1960 - September 1962

Year and Month	In "Nearby" (46-Cent) Area	In "Intermediate" (23-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Combination of "Intermediate" (23-Cent) and "Distant" Areas	Total
1960					
September	74,504	2,215	5,248		81,967
October	78,115	2,336	5,735		86,186
November	75,263	2,252	5,665		83,180
December	80,228	2,426	6,042		88,696
1961					
January	82,780	2,454	6,235		91,469
February	74,889	2,268	5,770		82,927
March	85,174	2,700	6,872		94,746
April	81,864	2,729	6,846		91,439
May	87,795	2,968	7,610		98,373
June	82,291	3,003	7,435		92,729
July	74,828	2,652	6,255		83,735
August	74,856	2,726	5,816		83,398
September	74,245	2,606	5,909		82,760
October	79,171	2,664	6,444		88,279
November	74,452	2,459	5,938		82,849
December	80,037	2,642	6,536		89,215
1962					
January	84,834	3,613*	5,993*		94,440
February	76,818	3,257	5,474		85,549
March	85,768	3,812	6,385		95,965
April	82,362	**	**	7,785	90,147
May	87,455			8,409	95,864
June	79,278			7,748	87,026
July	74,060			4,660	78,720
August	74,915			4,509	79,424
September	75,679			4,494	80,173
October	78,687			4,656	83,343
November	77,277			4,487	81,764

*The "intermediate" differential area was extended January 1, 1962, to include all of Berkshire County, Massachusetts. Prior to that date, no differential was applied to milk produced on farms located in that portion of Berkshire County which is north of the Massachusetts Turnpike.

**Receipts from producers located in the "distant" area are combined with receipts from producers located in the "intermediate" area beginning April 1, 1962, because of the limited number of handlers who received milk from producers located in the "distant" area.

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MARKET ADMINISTRATOR - SPRINGFIELD MARKETING AREA

RECEIPTS OF MILK FROM PRODUCERS

By Farm Location Differential Areas

(In Thousands of Pounds)

September 1960 - September 1962

Year and Month	In "Nearby" (46-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Combination of "Intermediate" (23-Cent) "Distant" Areas*	Total
1960				
September	30,663	20,071		50,734
October	31,774	21,735		53,509
November	30,753	21,146		51,899
December	32,522		23,246	55,768
1961				
January	33,132	23,598		56,730
February	30,106	21,727		51,833
March	34,544	25,507		60,051
April	33,675	24,190		57,865
May	36,474	26,046		62,520
June	34,203		25,210	59,413
July	32,010		15,019	47,029
August	32,139	18,309		50,448
September	31,236	14,870		46,106
October	31,915	17,050		48,965
November	29,962	17,982		47,949
December	31,373	23,302		54,675
1962				
January	32,634	24,550		57,184
February	29,759	22,298		52,057
March	34,123	25,700		59,823
April	33,899	23,507		57,406
May	36,297	25,360		61,657
June	33,879	23,973		57,852
July	31,570	23,922		55,492
August	32,120	24,579		56,699
September	31,591	24,984		56,575
October	37,254	13,800		51,654
November	33,509	15,813		49,322

*Receipts from producers located in the "intermediate" area are combined with receipts from producers located in the "distant" area because of the limited number of handlers who received milk from producers located in the "intermediate" area.

November 1962

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MARKET ADMINISTRATOR - SPRINGFIELD MARKETING AREA

RECEIPTS OF MILK FROM PRODUCERS
By Farm Location Differential Areas
(In Thousands of Pounds)
September 1960 - September 1962

Year and Month	In "Nearby" (46-Cent) Area	In "Intermediate" (23-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Total
1960				
September	12,803	831	2,068	15,702
October	13,425	1,022	2,180	16,627
November	12,763	1,067	2,226	16,056
December	13,532	1,179	2,474	17,185
1961				
January	13,797	1,188	2,555	17,540
February	12,579	1,118	703	14,400
March	14,688	1,330	825	16,843
April	14,799	1,288	813	16,900
May	16,086	1,366	864	18,316
June	15,638	1,320	959	17,917
July	14,087	1,080	617	15,784
August	13,869	940	488	15,297
September	13,445	929	662	15,036
October	14,197	1,028	694	15,919
November	13,150	948	640	14,738
December	14,031	1,035	668	15,734
1962				
January	14,660	1,110	723	16,493
February	13,482	1,009	654	15,145
March	15,578	1,154	733	17,465
April	15,677	1,174	732	17,583
May	16,562	1,241	823	18,626
June	15,400	1,210	800	17,410
July	13,979	1,033	314	15,326
August	13,836	915	242	14,993
September	13,809	959	275	15,043
October	13,893	1,062	510	15,465
November	13,492	1,042	528	15,062

[45] MARKET ADMINISTRATOR - WORCESTER MARKETING AREA

RECEIPTS OF MILK FROM PRODUCERS

By Differential Areas
(In Thousands of Pounds)

September 1960 - September 1962

Year and Month	In "Nearby" (46-Cent) Area	In "Distant" Area (Beyond Differential Areas)	Total
1960			
September	12,847	6,986	19,833
October	13,241	8,696	21,937
November	12,545	8,550	21,095
December	13,153	9,091	22,244
1961			
January	13,396	9,189	22,583
February	13,294	8,360	21,654
March	15,582	10,037	25,619
April	15,176	10,015	25,191
May	16,025	10,926	26,951
June	15,452	7,942	23,394
July	14,172	5,107	19,279
August	14,423	4,474	18,897
September	13,532	5,088	18,620
October	14,231	4,683	18,914
November	13,369	4,368	17,737
December	12,135	2,721	14,856
1962			
January	14,688	5,048	19,736
February	13,431	4,589	18,020
March	15,357	5,350	20,707
April	15,607	5,672	21,279
May	16,727	6,152	22,879
June	15,784	6,027	21,811
July	15,111	6,381	21,492
August	15,031	4,662	19,693
September	14,786	4,210	18,996
October	10,369	4,168	14,537
November	11,672	3,954	15,626

Exhibit No. 46

NUMBER OF PRODUCERS AND DELIVERIES PER PRODUCER PER DAY BY AREAS AND BY UTILIZATION AS CLASS I.

TABLE 6(a)
1959

	Number of Producers			Deliveries per day per dairy		* % Class I of receipts	
	Farm Location Diff. Area	Distant to: City plants	Country plants	Farm Location Diff.	All Distant Producers	City plants	Country plants
Jan.	1509	119	510	706	635	95.8	41.9
Feb.	1512	219	549	715	701	94.1	22.0
Mar.	1512	112	670	738	751	91.3	17.7
Apr.	1493	88	662	773	771	94.9	10.4
May	1476	74	664	818	823	92.8	5.7
June	1466	79	668	795	815	90.6	15.5
July	1481	89	497	715	683	95.0	45.8
Aug.	1452	84	498	716	569	95.6	61.4
Sept.	1463	87	646	713	649	95.6	34.2
Oct.	1468	115	662	721	714	95.9	26.2
Nov.	1426	119	657	730	710	92.5	21.3
Dec.	1419	89	657	744	727	90.1	14.4
Average	1473	106	612	740	712	93.7	26.4

TABLE 6(b)
1960

Jan.	1414	88	493	767	792	87.1	11.6
Feb.	1416	99	477	777	850	88.8	4.1
Mar.	1421	98	317	789	912	89.9	5.3
Apr.	1403	97	479	823	945	87.5	2.0
May	1381	113	479	870	1007	79.7	0.4
June	1382	117	479	823	937	85.2	2.8
July	1373	136	466	768	772	89.3	38.5
Aug.	1366	136	464	795	709	90.6	44.1
Sept.	1336	128	1061	766	563	96.9	43.0
Oct.	1320	127	989	776	628	93.1	43.9
Nov.	1315	112	983	780	644	93.5	43.3
Dec.	1316	114	981	797	685	92.1	25.1
Average	1370	114	639	794	787	89.5	22.0

* Includes receipts from producers in farm location differential areas and distant producers delivering to city plants.

NUMBER OF PRODUCERS AND DELIVERIES PER PRODUCER PER DAY BY AREAS AND BY UTILIZATION AS CLASS I.

TABLE 6(c)
1961

	Number of Producers			Deliveries per day per dairy		* % Class I of receipts	
	Farm Location Diff. Area	Distant to: City plants	Country plants	Farm Location Diff.	All Distant Producers	City plants	Country plants
Jan.	1310	107	982	815	710	90.0	22.0
Feb.	1303	109	982	824	721	90.0	33.4
Mar.	1290	106	953	863	778	90.7	32.4
Apr.	1295	81	954	866	779	86.3	34.0
May	1274	103	923	923	819	85.6	28.3
Jun.	1264	91	923	902	828	88.1	24.8
Jul.	1249	91	578	826	724	91.3	54.0
Aug.	1255	92	831	825	640	91.1	50.8
Sep.	1267	93	664	821	655	95.1	59.0
Oct.	1249	111	633	824	739	93.2	38.1
Nov.	1201	109	757	832	692	94.8	47.0
Dec.	1191	111	827	850	801	90.3	29.9
Average	1262	100	834	848	741	90.5	37.5

TABLE 6(d)
1962

Jan.	1192	114	823	883	845	91.2	24.6
Feb.	1197	108	824	888	854	91.8	23.8
Mar.	1186	104	820	928	897	92.4	25.2
Apr.	1182	105	728	956	941	87.1	25.6
May	1159	107	728	1010	980	86.8	21.6
Jun.	1165	109	716	969	969	89.4	24.2
Jul.	1149	189	830	886	757	90.8	48.0
Aug.	1148	198	876	903	738	89.8	54.1
Sep.	1137	205	861	926	781	89.2	46.5
Average 9 months	1168	138	801	928	862	89.8	32.6

* Includes receipts from producers in farm location differential areas and distant produce delivering to city plants.

TABLE 9(a)

AVERAGE PERCENTAGE CLASS I AND AVERAGE BLEND PRICE
(R.I.M.C. Board Comparative Monthly Report)

	Percent Class I Use					Average Blend Price				
	R.I.					(Rhode Island)				
	1954	1955	1956	1957	1958	1954	1955	1956	1957	1958
	93.8	92.2	90.6	93.2	93.2	$6.31	$6.48	$6.39	$6.50	$6.67
	94.2	90.8	92.7	90.4	89.5	6.32	6.41	6.40	6.39	6.49
	92.9	90.3	92.3	89.1	88.7	6.27	5.97	5.97	6.14	6.08
	90.2	90.6	88.5	87.2	89.0	5.74	5.98	5.80	5.67	6.06
	86.4	83.6	85.5	84.6	88.1	5.60	5.34	5.43	5.57	5.54
	89.2	87.4	87.7	86.8	89.0	5.70	5.47	5.50	5.64	5.70
	93.2	92.5	90.2	93.5	93.0	6.08	6.07	5.98	6.29	6.19
	90.9	92.7	92.5	95.0	93.0	6.01	6.08	6.07	6.38	6.29
	92.3	95.1	93.8	92.0	92.6	6.06	6.17	6.53	6.64	6.26
	92.6	93.1	93.0	92.8	94.8	6.50	6.50	6.50	6.71	6.32
	94.3	94.4	93.7	95.7	90.8	6.57	6.56	6.53	6.83	6.25
	94.3	94.2	91.0	91.0	90.8	6.55	6.54	6.42	6.64	6.25
erage	92.0	91.4	91.0	90.9	91.0	$6.14	$6.13	$6.13	$6.28	$6.18

	Boston					Boston 201-210 mile zone				
	1954	1955	1956	1957	1958	1954	1955	1956	1957	1958
	58.6	63.6	58.9	61.5	59.5	$4.61	$4.75	$4.55	$4.98	$4.81
	57.0	61.3	58.0	59.0	57.8	4.46	4.69	4.47	4.78	4.78
	50.2	54.3	51.9	55.0	51.3	4.14	4.19	4.15	4.46	4.38
	45.4	49.2	45.9	48.6	46.7	3.66	3.80	3.80	4.07	3.95
	39.3	41.2	45.7	42.6	43.2	3.42	3.53	3.70	3.84	3.76
	40.0	40.5	40.7	41.3	39.1	3.43	3.59	3.60	3.89	3.69
	50.8	57.8	49.0	54.8	50.3	3.89	4.23	4.26	4.54	4.24
	59.1	69.4	63.7	60.0	57.8	4.25	4.64	4.80	4.83	4.74
	62.5	55.9	62.8	62.5	61.4	4.61	4.66	4.79	5.03	4.84
	64.9	59.2	66.2	61.8	61.8	4.82	5.03	5.12	5.28	4.98
	72.5	64.4	68.0	63.9	64.1	5.01	5.19	5.39	5.36	5.05
	67.3	60.2	60.1	58.2	62.0	5.05	5.06	5.11	5.16	5.14
erage	55.6	56.4	55.9	55.8	54.6	$4.28	$4.38	$4.47	$4.62	$4.53

Note: Rhode Island Dealers not listed paid full Class I price.

TABLE 9(b)

PRICES TO PRODUCERS IN PHILADELPHIA AT COUNTRY AND AT CITY PLANTS

September 1961 to August 1962

	* Country Plants				City Plants		
	Number Plants	Ave. % Class I	Average Price	Diff.	Number Plants	Ave. % Class I	Ave. Price
1961							
Sept.	17	73.8	$4.71	$.88	33	91.9	
Oct.	17	78.1	5.12	.88	32	93.3	
Nov.	16	78.8	5.15	.83	32	93.3	
Dec.	15	74.3	5.02	.88	32	90.3	
1962							
Jan.	15	67.7	4.56	.89	32	87.6	
Feb.	16	62.2	4.42	.95	32	84.8	
Mar.	16	62.4	4.43	.97	32	85.8	
April	16	59.4	4.03	.98	32	84.9	
May	16	56.5	3.95	1.01	32	83.1	
June	14	58.6	3.99	1.01	31	84.1	
July	12	57.3	4.13	.88	32	82.3	
August	11	58.4	4.18	.92	31	84.9	
Average	15	65.6	4.47	.93	32	87.3	

* Adjusted to 205-1-215 miles.

TABLE II

DIFFERENCE BETWEEN RHODE ISLAND BLEND PRICES IN DIRECT DELI NEARBY ZONE AND BOSTON PRICES IN 201-210 MILE ZONES

	1954	1955	1956	1957
January	$1.70	$1.73	$1.89	$1.52
February	1.86	1.72	1.93	1.61
March	2.13	1.78	1.82	1.68
April	2.08	2.18	2.00	1.60
May	2.18	1.81	1.73	1.73
June	2.27	1.88	1.90	1.75
July	2.19	1.84	1.72	1.75
August	1.76	1.44	1.27	1.55
September	1.45	1.51	1.74	1.61
October	1.68	1.47	1.38	1.43
November	1.56	1.37	1.14	1.47
December	1.50	1.48	1.31	1.48
Average	$1.86	$1.68	$1.65	$1.60

Source: Rhode Island Milk Control Board Monthly Announcement of Prices to Produc
Boston Administrator Reports.

TABLE 12(a)

SOUTHEAST ORDER USE VALUE AND PRICES PAID AT CITY PLANTS AND AT COUNTRY PLANTS PRICE REDUCTION FROM USE VALUE IN FARM LOCATION DIFFERENTIAL AREA AND PRICE ADDITIONS TO USE VALUE AT COUNTRY PLANTS

	Farm Differential Area				Country Plant Deliveries			
	Percent Class I	Use Value	Blend Price	Price Reduction	Percent Class I	Use Value	Blend Price	Price Addition
1959								
Jan.	95.8	$6.33	$6.15	$.18	41.9	$4.33	$5.15	$ .82
Feb.	94.1	6.48	6.12	.36	22.0	3.86	5.12	1.26
Mar.	91.3	6.17	5.76	.41	17.7	3.53	4.76	1.23
Apr.	94.9	5.87	5.45	.42	10.4	3.22	4.45	1.23
May	92.8	5.60	5.21	.39	5.7	3.02	4.21	1.19
June	90.6	5.53	5.23	.30	15.5	3.25	4.23	.98
July	95.0	6.09	5.97	.12	45.8	4.29	4.97	.68
August	95.6	6.32	6.29	.03	61.4	4.88	5.29	.41
Sept.	95.6	6.75	6.44	.31	34.2	4.39	5.44	1.05
Oct.	95.9	6.75	6.38	.37	26.2	4.07	5.38	1.31
Nov.	92.5	6.64	6.26	.38	21.3	3.98	5.26	1.28
Dec.	90.1	6.55	6.13	.42	14.4	3.77	5.13	1.36
Average	93.7	$6.26	$5.95	$.31	26.4	$3.88	$4.95	$1.07

TABLE 12(b)

1960								
Jan.	87.1	$6.25	$5.93	$.32	11.6	$3.59	$4.93	$1.34
Feb.	88.8	6.31	5.96	.35	4.1	3.42	4.96	1.54
Mar.	89.9	6.13	5.90	.23	5.3	3.27	4.90	1.63
Apr.	87.5	5.47	5.21	.26	2.0	3.10	4.21	1.11
May	79.7	5.24	4.99	.25	0.4	2.97	3.99	1.02
June	85.2	5.39	5.16	.23	2.8	3.02	4.16	1.14
July	89.3	5.92	5.83	.08	38.5	4.13	4.83	.70
August	90.6	6.17	6.11	.06	44.1	4.46	5.11	.65
Sept.	96.9	6.51	6.27	.24	43.0	4.53	5.27	.74
Oct.	93.1	6.39	6.20	.19	43.9	4.59	5.20	.61
Nov.	93.5	6.41	6.21	.20	43.3	4.61	5.21	.60
Dec.	92.1	6.37	6.01	.36	25.1	4.13	5.01	.88
Average	89.5	$6.05	$5.82	$.23	22.0	$3.82	$4.82	$1.00

TABLE 12(c)

SOUTHEAST ORDER USE VALUE AND PRICES PAID AT CITY PLANTS AND AT COUNTRY PLANTS PRICE REDUCTION FROM USE VALUE IN FARM LOCATION DIFFERENTIAL AREA AND PRICE ADDITIONS TO USE VALUE AT COUNTRY PLANTS

	Farm Differential				Country Plant Deliveries			
	Percent Class I	Use Value	Blend Price	Price Reduction	Percent Class I	Use Value	Blend Price	Price Addition
1961								
Jan.	90.0	$6.10	$5.78	$.32	22.0	$3.98	$4.78	$.80
Feb.	90.0	6.09	5.84	.25	33.4	4.19	4.84	.65
Mar.	90.7	5.90	5.63	.27	32.4	3.98	4.63	.65
Apr.	86.3	5.39	5.25	.14	34.0	3.86	4.25	.39
May	85.6	5.17	5.04	.14	28.3	3.64	4.04	.40
June	88.1	5.23	5.07	.16	24.8	3.58	4.07	.49
July	91.3	5.93	5.93	.00	54.0	4.58	4.93	.35
Aug.	91.1	5.93	5.88	.05	50.8	4.56	4.88	.32
Sep.	95.1	6.04	6.02	.02	59.0	4.73	5.02	.29
Oct.	93.2	5.99	5.84	.15	38.1	4.28	4.84	.56
Nov.	94.8	6.24	6.12	.12	47.0	4.60	5.12	.52
Dec.	90.3	6.11	5.83	.28	29.9	4.17	4.83	.64
Ave.	90.5	$5.84	$5.69	$.15	37.8	$4.18	$4.69	$.51

TABLE 12(d)

1962								
Jan.	91.2	$5.94	$5.65	$.29	24.6	$3.95	$4.65	$.70
Feb.	91.8	5.95	5.64	.31	23.8	3.93	4.64	.71
Mar.	92.4	5.95	5.58	.37	25.2	3.82	4.58	.76
Apr.	87.1	5.38	5.14	.24	25.6	3.54	4.14	.60
May	86.8	5.18	4.95	.23	21.6	3.38	3.95	.57
June	89.4	5.25	5.02	.23	24.2	3.46	4.02	.56
July	90.8	5.90	5.77	.13	48.0	4.34	4.77	.43
Aug.	89.8	6.08	5.98	.13	54.1	4.65	4.98	.33
Sep.	89.2	6.05	5.89	.16	46.5	4.43	4.89	.46
Oct.			6.11				5.11	
Nov.								
Dec.								
Ave.								

TABLE I(a)

NUMBERS OF PRODUCERS BY STATES
1959 - 1961

	1959	1960	1961	Change from 1959	August 1962	Change from 1959
Connecticut	411	392	357	- 54		
Massachusetts	625	582	535	- 90		
Rhode Island	411	376	337	- 74		
Total Nearby	1447	1350	1229	- 218	1148	- 299
N.H. & N. Y.	137	133	149	+ 12		
Vermont	566	610	772	+206		
Total Distant	703	743	921	+218	1074	+371
Grand Total	2150	2093	2150		2222	+ 72

Notes:

(a) *Source:* Market Administrator's Southeastern New England Milk Market Statistics for the years - 1959, 1960 and 1961, and Monthly Statistical Reports for months of 1962.

(b) *Source:* Farm location differential receipts were from producers living in Connecticut, Massachusetts and Rhode Island except that in 1959, 223 thousand pounds were received from New Hampshire upon which a differential of 23 cents was paid.

TABLE 10

CITY PLANT BLEND PRICES AND CLASS I PERCENTAGES OF PRODUCER MILK

1961

	Blend Prices City Plants		Class I Percentages of Producer Milk	
	Southeast	Springfield	Southeast	Springfield
January	$5.78	$5.72	68.1	72.9
February	5.84	5.72	71.8	75.8
March	5.63	5.41	71.1	73.1
April	5.25	4.98	67.8	68.8
May	5.04	4.77	66.0	66.2
June	5.07	4.71	65.6	63.4
July	5.93	5.32	82.2	67.7
August	5.88	5.45	79.1	71.7
September	6.02	5.58	86.4	76.7
October	5.84	5.54	78.8	74.6
November	6.12	5.90	81.3	80.9
December	5.83	5.63	70.0	72.5
Average	$5.67	$5.37	73.4	71.8

1962

	Southern New England		Connecticut		Worcester		Springfield	
April	$5.14	67.1	$5.06	73.2	$5.05	68.8	$4.91	68.4
May	4.95	65.3	4.87	72.7	4.87	68.3	4.83	71.7
June	5.02	67.6	4.99	76.1	4.94	69.2	4.81	72.1
July	5.77	76.2	5.63	79.1	5.44	68.5	5.32	71.1
August	5.98	77.8	5.82	81.1	5.86	77.9	5.58	74.3
Sept.	5.89	74.8	5.82	81.2	5.88	79.4	5.77	79.3
Average	$5.46	71.4	$5.36	77.2	$5.34	72.0	$5.20	72.8

Exhibit 77A

Excerpts From

FEDERAL REGULATION OF MILK HANDLING IN BOSTON
1933-46

The Development of the Licenses and Order Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, November 3, 1933 - June 1, 1946

Prepared for the Market Adminstrator under
Federal Milk Order No. 4

Gilbert R. Barnhart

April 1947

(Presented as a Thesis in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy, Department of Government, Harvard University)

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Title VII

Allocation of Producers' Shares in the Class I Market

The general base period under License 15 was September, October, and November, 1932, which applied to all producers not excepted by special provisions. Of these latter, there were three types, constituting three special classes of producers: (1) producers whose milk on September 1, 1933, was being trucked directly from farms to plants located in the marketing area or was being distributed in the market by the producers, who retained their cooperative association or handler bases, or if no such bases existed, were allotted bases equal to 90 percent of their average daily deliveries of milk during the general base period or any part thereof, or if no deliveries were made during the general base period, 90 percent of their average daily deliveries for the first 90 days of deliveries or part thereof elapsed on September 1, 1933; (2) country producers delivering milk on September 1, 1933, under base rating plans in effect prior to that date, who retained their bases under such plans; and (3) Golden Guernsey producers, who received a group base equal to the aver-

age daily sales of Golden Guernsey milk in the market as Grade A or under a Golden Guernsey trade name during the general base period, such total base to be distributed among individual producers by the American Guernsey Cattle Club, subject to the market administrator's approval. Producers not covered by an exception class and who delivered milk or cream during the general base period received bases, after the computations were completed, equal to 64 percent of their average daily deliveries during the general base period.[5]

Those groups of producers who had not been selling milk under a base rating plan prior to the installation of the federal base system felt that the provisions of the latter unduly favored producers who had operated under the New England Milk Producers' Association bases. Therefore, the new base plan under License 38 offered a compromise.[6] The total of bases to be established was to equal the total average quantities of milk used daily by handlers in the market as Class I milk. To determine an individual producer's base, the percentage of Class I use to deliveries in the base period was applied to such producer's average daily deliveries during September, October, and November, 1933, or his average daily deliveries during the calendar year 1933, whichever was higher. The general percentage computed for the market was 61 percent.[7]

License 38 did not, in terms, specify any variations from the general method of computing bases for classes of producers, but the administrator, acting under his power to revise bases to maintain equity among producers, allotted preferential bases to nearby producers to give effect to the historically higher prices they had received in the market. A study was made of the eight years 1926 to 1934 to obtain the proper differential between nearby and distant producers' returns from the sale of milk. It was determined that all producers whose milk was delivered directly to plants located within 35 miles of the State House in Boston should have bases equal to 85 percent of the higher of their daily average deliveries in the alternative base periods.[8]

Under the first license, the provisions relating to the computation of bases did not contemplate any necessity for administrative discretion to modify bases of individual producers who, because of unusual circumstances peculiar to their production, might be very greatly injured by the allotment to them of very low bases. In the brief period of its operation, the original base plan proved to be too rigid. The market administrator received scores of letters from producers appealing for relief from what were often absurd bases, but since neither the license nor the agreement empowered him to modify the base rating rules, he could only reply with inconclusive promises to grant the relief when and if he was given the necessary power through an amendment. As we shall see in Chapter V, although the power was sought earnestly, it was never granted, and it remained for License 38 to correct the defect. Here was an example of too hasty generalization about the nature of production in the milkshed. The license attempted to reduce to rule matters whose natural variation was considerably wider than the experience of the people who drafted the regulation. Discretion was indispensable to administration even of general rules relating to the base rating system.

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[5]Annual Report of the Market Administrator for the Greater Boston Sales Area for the Year Ended June 30, 1935, Section VIII, p. 1a.

[6]Loc. cit.

[7]Loc. cit.

[8]Annual Report of the Market Administrator for the Greater Boston Sales Area for the Year Ended June 30, 1935, Section VIII, p. 1b.

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Title VII.

Allocation of Producers' Shares in the Class I Market

I. Establishment of bases

A. For regular producers

Dr. Ellenberger proposed changing the 1933 base period from September, October, and November 1932, to "the five months, July to November, inclusive, 1932": and the 1934 base period, comparably, to the five months, July to November, inclusive, 1933. The longer rating period, in Dr. Ellenberger's opinion, would have been more equitable to that group of producers who had never been under any rating plan before November 3, 1933, and whose production followed seasonal trends more closely than that of the group of producers who had operated under the base rating plan introduced for the Boston market by the NEMPA in 1930 This latter group had learned to increase production in the "open" months of September, October, and November to improve their bases for succeeding years. Therefore, their late summer production tended to be short and needed the complementing supply produced during the months of July and August by the seasonal producers, if the needs of the market were to be met. Including July and August in the base period would have allowed credit to seasonal producers for high production in these months, resulting in their obtaining higher bases for the subsequent year.[70] The Hood Company opposed these amendments. It considered September, October, and November, the months least disturbed, on the demand side, by vacations and abnormal business conditions and therefore the best months to take as the base period.[71]

B. For new producers

Dr. Ellenberger proposed raising the maximum base allowed a new producer from 60 to 65 percent of his average daily deliveries during the first 90 days. Such a change was thought more equitable, especially where a new producer had his farm in nearby territory and knew his neighbors had high bases.[72]

Ellenberger also proposed amending paragraph 3 of section A of Exhibit D to give cream producers bases if they were willing to deliver Class I and/or Class II milk on demand of the handler to whom they usually delivered.[73]

C. For special classes of producers

1. Nearby producers

Reginald W. Bird, representing the Massachusetts Producers' Advisory Committee and in general nearby Massachusetts producers, offered a proviso to sub-paragraph (a) of paragraph 1, Section A, Exhibit D, as follows:

> "Provided however that those Massachusetts Producers who truck to a dealer located within a distance not exceeding 30 miles from the Massachusetts State House selling in the Boston area shall be regarded as located in the Boston area, and the producers or dealers located in the Boston area who ship outside the Boston area into a secondary market area shall be regarded as located within the limits of the particular market in which their product is sold. The distributor selling within and without the Boston area shall pool among all his producers the surplus ratings in the different markets to which he ships in proportion to the volume of his shipments according to the ratings of his producers."

As we have seen, there were pending amendments to the definition of the Greater Boston market which would have limited the market to the area within some definite radius of the State House. Bird pointed out that no matter what radius was selected, there would always be nearby producers who would be delivering to handlers' plants located outside the official market area and who would be ineligible to receive the high bases provided by the first part of subparagraph (a). The amendment seems, therefore, to have intended a separation of three groups of nearby producers classified on the basis of deliveries to handlers who make sales (a) in the Boston market only, (b) in secondary markets only, or (c) in both the Boston and secondary markets. The 30-mile limit selected by Bird merely extended arbitrarily the concept of the mar-

ket for the purpose of securing to a larger group of nearby producers the favorable nearby basing provisions. The next clause of the amendment did attempt to exclude a group of nearby producers who delivered to handlers who were deemed (by the terms of the clause) to be handlers operating in other markets. These producers would have been cut off definitely from the benefits of subparagraph (a). The second sentence of the amendment then provided for allocating the total surplus which a handler would carry as the result of operations in two or more markets. From Mr. Bird's testimony, it would seem he intended that nearby producers bear only the surplus which they created.[74] Therefore, this group would gain a still more preferred position in the market. The Hood Company approved the first part of this proposal, but objected to the creation of any special pooling requirements that might have to be devised to carry out the intent of the remainder of the amendment.[75]

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[70]Hearing 2, pp. 656-662.

[71]Second Memorandum Brief submitted by H. P. Hood & Sons, Inc., in connection with Hearing 2, p. 17.

[72]Hearing 2, p. 662.

[73]Hearing 2, p. 663.

[74]Hearing 2, pp. 687-689.

[75]Second Memorandum Brief submitted by H. P. Hood & Sons, Inc., in connection with Hearing 2, p. 16.

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Title VII.

Allocation of Producers' Shares in the Class I Market

I. Establishment of Bases

C. For special classes of producers

1. Near-by producers

Effective March 16, 1935, an administrative change of considerable significance took place in the percentage applied in the establishment of near-by producers' bases. Before this date producers whose farms were located within 35 miles of the State House had been assigned bases equal to 85 percent of their average daily deliveries in September, October, and November, 1933, or 85 percent of their average daily deliveries for the entire calendar year 1933, whichever amount was greater. But by the middle of March 1935, a large proportion of small handlers buying Massachusetts milk were not complying with the license. So, as a concession to win the cooperation of the Massachusetts Milk Control Board in enforcing, or trying to enforce, the terms of the federal license on intrastate handlers, the cooperative associations agreed to allow to producers whose farms were located within 40 miles of the State House bases equal to 100 percent of the higher figure yielded by the two alternatives mentioned above. These bases became effective March 16, 1935. Less than five percent of the producers in the market were within the 40-mile zone.[12] Apparently this was the first appearance of the 40-mile zone as a definite working concept in the market regulation, although it did not appear in the official language until Order No. 4 became effective.

II. Rules for Administration of Base Rating System

The wording of the "75 percent rule", which had been put into the license on February 24, 1935, in a form such that it had a quite different result from that of the rule as applied administratively, was changed to conform to the administrator's version, to be effective until July 1, 1936. This amendment had been requested by the market administrator.

See discussion, page 209. A new paragraph, paragraph 2 of section 4 of Exhibit A, was inserted, providing that as of July 1, 1936, and thereafter, the rule would apply with the effect of the wording as it stood in the license from February 24 to April 30, 1935. The net effect was to restore the administrator's rule until the producers in the market had been afforded ample warning of the application after July 1, 1936, of the more drastic version of the rule. This result had been suggested by the administrator. See discussion cited above.

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[12] Annual Report of the Market Administrator for the Greater Boston Sales Area for the Year Ended June 30, 1935, Section VIII, p. 1b.

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C. For special classes of producers

1. Nearby producers

Order No. 4 included nearby producers under the base rating provisions applicable to regular producers and new producers, as the case might be, and made no provision for preferential bases as the license had done. Nearby producer differentials under the order took the form of a guarantee of payment of the city plant Class I price of $3.30 per hundredweight for all delivered base milk testing 3.7 delivered by producers whose farms were located not more than 40 miles from the Boston State House to handlers' plants located not more than 40 miles from the State House.

Under the order producers having farms located not more than 40 miles from the State House had their bases reduced about 25 percent. These producers under the license had been allotted bases of 100 percent of their daily average deliveries in the year 1934. Their new bases were computed under the order by taking 75 percent of their daily average deliveries in 1933, 1934, or the year ending September 30, 1935, whichever was the highest.[126]

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[126] Annual Report of the Market Administrator for the Greater Boston Sales Area for the Year Ending June 30, 1936, Section VIII, p. 13.

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B. Farm location differentials

1. Applicable to near-by producers

Paragraph 2, Section 1, Article VIII of the original order required payment of $3.30 per hundredweight, the established city plant Class I price payable to producers, for base milk delivered by producers whose farms were located within 40 miles of the State House to handlers' plants similarly located. This sort of provision had been necessary under the base rating system as set up after February 9, 1936, to make a real differential effective to these producers. The amended order, having omitted base rating, converted this provision into one providing, in paragraph 4, Section 4, Article VIII, for payment of 46 cents per hundredweight in addition to blended prices to producers whose farms were located within the 40 mile zone. Deliveries to plants located within the zone was omitted as a condition and the differential was thereby converted into one depending solely on farm location. These producers could deliver to more distant plants and still receive the differential, although they would then have their payments subject to deductions for freight. The 46 cents was subject to reduction in cases where the blended prices plus 46 cents exceeded $3.19 per hundredweight, the established city plant Class I price payable to producers.

In the hearing the government tentatively proposed that this differential be 36 cents per hundredweight, pending the receipt of evidence as to the proper amount.[76] Wesley Bronson testified that from 1927 through 1930 producers delivering to the Deerfoot Farms Company at Southboro, Massachusetts, received on the average for all milk so delivered $1.16 per hundredweight more than producers received on the average in the 191-200-mile zone for all milk. Also, in the ten years 1923 through 1932, producers delivering to the J. B. Prescott Company at Bedford, Massachusetts, received on the average $1.04 per hundredweight more for all milk than producers in the 191-200-mile zone.[77] Both of these companies mentioned had their plants located within the 40 mile zone. Since the

proposed differential would give near-by producers about 90 cents per hundredweight over 200-mile zone producers,[78] Bronson thought it was adequate.[79]

John L. Carten, Jr., representing the Nearby Milk Producers Association whose members had farms in the 40-mile zone, thought 90 cents was too low and gave evidence that one of the producers he represented had received between $1.20 and $1.30 per hundredweight over the NEMPA price in the 200 mile zone for all milk delivered by this producer in the period 1920 to 1930 to the Hood Company at Salem, Massachusetts. Carten wanted at least a cent a quart differential, or 46 cents per hundredweight.[80] In a brief submitted later, the Association reiterated the request for 46 cents, which would give near-by producers about one dollar more per hundredweight than 200 mile producers, and stated that only on this basis would its directors and members support the amended order.[81]

2. Applicable to intermediate producers

The amendment offered in the hearing by the Dairy Section, with respect to the amount of differential payable to these producers in addition to the blended price for all milk delivered, proposed 18 cents per hundredweight as a tentative figure, pending introduction of evidence as to the proper histroical differential.[82] This provision was new in the order and was intended to recognize the price advantage these intermediate producers had enjoyed long before the regulation had taken effect in the market and which the base rating system had recognized by the allocation to them of high bases. When base rating disappeared from the order, some other provision had to be substituted with respect to intermediate producers, or the order would operate to their disadvantage.[83]

Evidence of prices paid producers by the Manchester Dairy System, Inc., of Manchester, New Hampshire, a small operating cooperative association when then had the only receiving plant in the 40-80 mile zone was submitted in a brief after the hearing. This purported to show that for the years 1929-1936, inclusive, Manchester producers had been paid on the average $.594 per hundredweight more than the average prices paid producers

in the 200 mile zone.[84] However, the order as issued contained a 23 cent per hundredweight differential, or a half cent per quart, payable to producers with farms located in the intermediate zone. Added to the difference in the carlot freight allowances for the zone in which the Manchester plant was located and for the 200 mile zone, this gave Manchester producers about 35 cents per hundredweight more than 200 mile zone producers.

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[76]Hearing 6, pp. 231-232. R. D. Aplin.

[77]Hearing 6. p. 266.

[78]Hearing 6, p. 267.

[79]Hearing 6, p. 266.

[80]Hearing 6, pp. 281-282.

[81]Brief subscribed and sworn to by John L. Carten, Jr., July 3, 1937.

[82]Hearing 6, pp. 231-232. R. D. Aplin.

[83]Hearing 6, pp. 10, 232, 356. R. D. Aplin.

[84]Brief regarding proposal to amend Order No. 4 regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, Article VIII, Section 4, Paragraph 3, subscribed and sworn to by Carl A. Smith, Manager, Manchester Dairy, Inc.

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II. Adjustments in Payments to Individual Producers

B. Farm location differentials

1. Applicable to nearby producers

The January 16* amendments extended the payment of the 46 cent near-by differential to milk delivered from farms located in Barnstable and Plymouth Counties, Massachusetts. These counties were close enough to the marketing area to give rise to conditions of production and marketing similar to those obtaining for milk produced on farms located within the 40-mile zone. These counties were two of the coun-

ties named in section 4, Article IV, relating to outside market prices and freight allowances, which were considered to be too close to the marketing area to permit freight allowances on producer milk sold in markets lying within them.

2. Applicable to intermediate producers

The limitation on the differential payable on milk delivered from 40-mile farms was extended by the January* amendments to apply to the 23-cent payment on milk delivered from intermediate farms. In both cases the upper limit was the city plant Class I price for milk other than that sold to the Federal Surplus Commodities Corporation.

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*(1939)

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Title VIII.

Payments to Producers

II. Adjustments in Payments to Individual Producers

B. Farm location differentials

Under Section 10(e)(3) and (4) of the order before the June 1 (1946) amendments the limitations on the amounts of additional payments to near-by and intermediate producers were set at the Class I city plant prices. This prevented near-by producers, whose farms were located in city plant territory from receiving anything more than the highest price payable for Class I milk at the plants to which they delivered milk. But the intermediate producers could be paid a combination of zone blended prices plus 23 cents or some fractional part thereof and in effect receive per hundredweight a price higher than the zone Class I prices applicable to Class I milk received at the plants to which they delivered milk. The market administrator recommended that the total price payable to both nearby and intermediate producers be limited to the zone Class I price payable at the plants at which their milk was received. The proposal was inserted in the hearing notice by the Branch and finally adopted.

A study in the market administrator's office showed that from 55 to 70 producers in various periods had received over $3,000 in excess of the value of their milk at the zone Class I prices. The administrator maintained that the intent of the order was to limit nearby and intermediate differentials to the applicable zone Class I prices. Furthermore, the 40-mile zone runs through Providence, Rhode Island, and Fitchburg and Worcester, Massachusetts. Outside market handlers operated plants just outside the 40-mile zone, and if they should become pool handlers under the order, they would be in a position to draw credits from the pool in the short season when the blended prices were high, even though the handlers had 100 percent Class I use of receipts. They would be credited with payments of blended prices plus nearby and intermediate differentials which would total greater than their zone Class I charge.[88] There was no opposing testimony.

In subparagraph (1) and (2) of Section 10(a) new limitations were established at the zone Class I prices applicable to plants at which near by and intermediate milk was received.

On June 1 Barnstable and Plymouth Counties were deleted as additional areas, farm location in which entitled a producer to receive the 46 cent near-by differential. The necessary proposal was made by the administrator. A study had showed that no producers whose farms were located more than 40 miles from the State House in these counties had delivered milk to pool handlers since June 1942.[89]

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[88]Hearing 16, pp. 1574-1578. R. D. Aplin.

[89]Hearing 16, pp. 1578-1580. R. D. Aplin.

Exhibit 77

TABLE 7

SEASONAL VARIATION IN 1962 MILK PRODUCTION BY "NEARBY" PRODUCERS IN NEW ENGLAND FEDERAL ORDER MARKETS AND BY "DISTANT" PRODUCERS IN THE BOSTON MARKET

	Boston "District" Producers		Five-Market Nearby Producers	
	Daily Average Deliveries	Percent of 1962 Daily Average	Daily Average Deliveries	Percent of 1962 Deliveries
	(1000 lbs.)		(1000 lbs.)	
Jan.	4,873.87	90.84	5,088.84	100.40
Feb.	4,927.21	91.83	5,128.46	101.18
Mar.	5,367.96	100.05	5,245.87	103.50
Apr.	5,963.93	111.15	5,318.33	104.93
May	6,239.29	116.28	5,479.52	108.11
June	6,514.27	121.41	5,224.33	103.07
July	5,276.35	98.34	4,758.06	93.88
Aug.	4,963.71	92.51	4,774.29	94.20
Sept.	5,086.50	94.80	4,921.60	97.10
Oct.	5,300.61	98.79	4,912.19	96.92
Nov.	5,044.20	94.01	4,921.93	97.11
Dec.	4,823.58	89.90	5,057.77	99.79
1962	5,365.52	100.00	5,068.48	100.00

Exhibit 19

MARKET ADMINISTRATOR - CONNECTICUT MARKETING AREA

NUMBER OF PRODUCERS, BY STATES (Preliminary)

January - July 1962

	Connecticut	New York	Massachusetts, Rhode Island*, and Vermont**	All States
January	1,671	1,054	246	2,971
February	1,659	1,048	245	2,952
March	1,625	1,038	244	2,907
April	1,619	1,034	164	2,817
May	1,595	1,020	160	2,775
June	1,591	1,023	161	2,775
July	1,560	955	157	2,672

RECEIPTS OF MILK FROM PRODUCERS, BY STATES OF ORIGIN (Preliminary)

January - July 1962

(In Thousands of Pounds)

	Connecticut	New York	Massachusetts, Rhode Island* and Vermont**	All States
January	44,830	42,250	7,354	94,434
February	40,610	38,751	6,184	85,545
March	45,719	42,855	7,446	96,020
April	44,132	41,656	4,334	90,122
May	46,993	43,727	5,155	95,875
June	42,926	39,281	4,846	87,053
July	40,962	33,254	4,466	78,682

*No milk was received from producers located in Rhode Island during July 1962.

**No milk was received from producers located in Vermont during April-July 1962.

THE MARKET ADMINISTRATOR'S REVIEW

August 1962 Volume 14, No. 7

AUGUST HEARING TO BRING COMPENSATORY PROVISIONS IN LINE WITH SUPREME COURT DECISION

In an effort to bring the New England Federal milk orders into line promptly with the Lehigh Valley decision of the United States Supreme Court, a public hearing will be held in Boston's Hotel Bradford, commencing at 10 a.m., on August 28, 1962. In its notice of the hearing the USDA said the "hearing is being called in response to a request by a large number of producer groups to review particularly the provisions of the various orders which relate to treatment of partially regulated milk. As indicated by the Department's invitation to interested persons for proposed order amendments, the order provisions pertaining to the definitions of pool plants, pooling requirements, and the definitions of producer have a direct bearing on the extent and volume of milk partially regulated in the respective markets. Because of the related importance of the definitions and pooling requirements under each of the orders, which assist to determine the scope of class pricing and pooling under the respective orders, such provisions are open for review at this hearing as they relate to the proposals" in the notice of hearing.

On June 22, twenty-two producers' cooperative associations joined in a petition to the Department for an emergency hearing to consider substituting for the compensatory payment rate which now equals the difference between the Class I and Class II price at the plant from which outside milk may originate a new rate equal to

the difference between the applicable Class I and blended prices. On July 13 these cooperatives reaffirmed this proposal for consideration at the August hearing.

On July 30, 1962, Milk Marketing Orders Division Director Herbert L. Forest met in Boston with the representatives of the cooperatives. He discussed the "Wichita Plan" and possible modifications of it in light of the Lehigh Valley decision.

On August 2 the technical committee made up of economists of the New England cooperatives met again in the Market Administrator's office to discuss further suggestions for the revision of the compensatory payment provisions of the New England orders. At that meeting the committee agreed that the handler responsible for making compensatory payments should have the choice of making them at the rate, as at present, of the difference between the Class I and Class II prices, applicable at the outside plant where the milk was received from farmers, in which case the administrative assessment would apply on only the quantity of fluid milk products brought in from outside and disposed of in the marketing area. Or, provided that the necessary reports, records, and facilities are made readily available to the Market Administrator, he should have the choice of making them at the rate of the difference between the Class I and blended prices of the New England order applicable at the outside plant where the milk was received from farmers, plus any amount by which the classified use value (at New England class prices) of *all* of the milk received from dairy farmers at the outside plant exceeded the sum of of the amount *actually paid* to the oustide dairy farmers and the part of the compensatory payment based on the difference between the New England order Class I and blended prices applied to the quantity of fluid milk disposed of in the marketing area. If he chose this latter alternative the amount of the administration assessment would be based on the *total* quantity of receipts of fluid milk products at the outside plant.

On August 9 the 22 producers' cooperative associations joined in sponsoring a new proposal embodying the plan worked out by their technical committee on August 2.

The Hood company's proposed amendments concerning the compensatory payment features of the orders are as follows:

Amend Section 65 of the Greater Boston order and the corresponding provisions of the other four New England orders to provide that in order to insure uniform minimum class prices to all handlers in the marketing area, any person having route disposition

* * *

FARM LOCATION DIFFERENTIALS TO BE AIRED AT NEW ENGLAND MILK HEARING IN NOVEMBER

Often, public milk hearings are concerned exclusively with technical matters that repair or renew the machinery of milk marketing but are of little direct concern to producers. The comprehensive hearing scheduled for next November to consider 51 proposals is not such a hearing. It will hear three subjects which are of great importance to individual producers and to groups of producers. The time for them to be fully informed on these subjects is prior to the hearing so that they may express their views fully, either in person or through their representatives, at the hearing.

There have been times when after a hearing had been held, testimony and evidence analyzed by the USDA, amendments made, and action brought about by the new amendments, that producers have been shocked into an unhappy awareness that some changes had been made. This should not happen. In various ways producers are being given full notice that proposals for changes in New England milk orders have been made which, if adopted, will affect them significantly through their price for milk. What are these proposals?

There are three groups of proposals which merit the serious attention of producers: (1) Proposals for merging some or all of the New England orders;

(2) proposals for reducing the amounts by which Class I and blended prices (before addition of the farm location differential, if any) at city plants exceed prices in the basic Zone 21; and (3) proposals concerning the 46¢ and 23¢ farm location differentials. The purpose of this article is to present those in group (3).

Differentials Deeply Rooted

Farm location differentials have been in the Boston order since August 1, 1937, and in the other New England orders since their inceptions at the existing rates of 46¢ and 23¢, depending upon nearness of farm to market. Why were nearby producers given higher prices than those to distant producers beyond the amount justified by transportation cost? There has been folklore which held that nearby producers have a "right" to a location differential, that in some way the markets belonged to them and that upcountry producers are "outsiders" whose costs of production are lower and who are not "entitled" to as high a price. But all folklore aside, the important fact is that, historically, nearby producers did receive such higher prices.

At a public hearing in June 1937 the Government tentatively proposed farm location differentials of 36¢ and 18¢. Mr. Wesley Bronson, then economist for the New England Milk Producers' Association, testified that from 1927 through 1930 producers delivering to Deerfoot Farms Company at Southboro, Massachusetts, received on the average $1.16 a hundredweight more than producers received on the average in the 191-200-mile zone of the Boston milkshed. In the years from 1923 through 1932, a 10-year period antidating Federal regulation, producers delivering to the H. P. Prescott Company at Bedford, Massachusetts, received on the average $1.04 a hundredweight more for their milk than did producers in the 191-200-mile zone. The proposed farm location differential of 36¢ would give producers delivering to plants within 40 miles of Boston about 90¢ more than the price in the 191-200-mile zone, and Mr. Bronson supported the proposed differentials.

The Nearby Milk Producers' Association, represented at the hearing in 1937 by the late John L. Carten, Jr., considered the 90¢ overall differential to producers on farms within 40 miles of Boston to be inadequate. He gave evidence that one of the producers in the Association received from $1.20 to $1.30 a hundredweight over the NEMPA price in the 191-200-mile zone for milk delivered during the period 1920-1930 to the Hood company plant in Salem, Massachusetts, and he maintained that the nearby farm location differential should be at least a cent a quart, or 46¢ a hundredweight, which would give nearby producers about $1.00 a hundredweight more than the price to producers in the 191-200-mile zone.

Prior to August 1, 1937, higher returns to nearby producers had been provided through granting such producers preferential bases. The base-rating plan was dropped and the farm location differential became the vehicle in the August 1, 1937, amended Order No. 4 for granting higher returns to nearby producers.

Whether nearby producers received these premiums over upcountry prices because they were supplying handlers selling relatively large proportions of their milk as fluid milk or for what other reasons, is of little practical concern at this time. The important thing is that they did receive higher prices under the conditions prevailing before Federal regulation, and that the regulation recognized this fact. One of the questions that will be before the November hearing is whether the farm location differentials of 25 yars ago, which were about 25¢ of the price, are appropriate under conditions existing today.

Prosposals to Change Differentials

The operating cooperatives in the Boston milkshed have proposed that the present farm location differentials be reduced percentagewise each month by the percentage of Class II milk to producer receipts in the Boston pool. In 1961 the resulting within-40 nearby differentials, according to this proposal, would have declined from about 28¢ in January and February to 20¢ in June and climbed back up to 28¢ in November

and December. It would have averaged 25¢ for the year, or 21¢ below the present rate. Similarly, the intermediate zone differential would have varied from about 14¢ to 10¢ and back up to 11¢ in these months for an average of 12½¢, reflecting a reduction of about 10½¢ from the present 23¢ rate.

In the past there has been a proposal for raising the 16¢ within-40 rate to make it about 25% of the price to producers, restoring its relative importance to that prevailing a generation ago. At the other extreme there have been repeated proposals for the outright abolition of the nearby farm location differentials.

The Federal Milk Order Study Committee, widely known as the Nourse Committee, took a rather dim view of such differentials in its report issued in April 1962. The Committee said:

"Precedents for nearby differentials were established during the period of collective bargaining before there were any Federal orders. Various advantages have been claimed for nearby milk from the viewpoint of handlers — such as more desirable seasonality, earlier and more dependable arrival at city plants, easier and more economical supervision of producers and quality the possibility of direct hauling from the farms eby saving the expense of country plant operation. wever, the major purpose of nearby differentials apparently has been to compensate nearby producers for sharing market Class I sales with more distant producers in a market-wide pool. This principle seemingly was founded on the belief that in the absence of regulation, a higher percentage of nearby milk would be sold for fluid use.

"Producers in areas with a long history of nearby differentials have based their production decisions on them and capitalized their value into land and facilities. Consequently the differential payments are no doubt regarded by the participants as valuable 'market rights.'

"On the other hand, the manner in which nearby differentials are applied has a decided impact on intermarket relationships. Their use and effect may need careful re-examination in light of present conditions of increased mobility of milk supplies, for the payment

of special nearby differentials out of pool funds depresses the uniform price to producers outside the differential zones and thus tends to limit the extent of the supply area and maintain a higher fluid utilization under an order than would otherwise prevail. At the present time, this effect is so small in some instances as to be negligible. In others, it is very significant.

"Under the Boston order, nearby differentials are paid on only about 6% of the pooled milk and the uniform price is depressed less than 3¢ per hundredweight by these payments. Under the New York-New Jersey order, slightly less than 20% of the pooled milk qualifies for the nearby differentials and the uniform price is depressed about 6¢ per hundredweight.

Effect on Intermarket Relationship

"On the other hand, under the Federal orders for Worcester, Springfield, Southeast New England and Connecticut, nearby differentials are paid on 65% to more than 90% of the pooled milk and uniform prices are depressed from about 30¢ to more than 40¢ per hundredweight. In 1960, 90% of the pooled milk under the Connecticut order qualified for the 46¢ differential, and 3% for the 23¢ differential. The total amount paid in nearby location differentials was equivalent to 43¢ per hundred pounds of all pooled milk and the uniform price to producers outside the differential zones was depressed to that extent. Thus, the attraction of the high blended price resulting from a high Class I utilization under the order is substantially reduced with respect to producers in the outlying areas.

"In circumstances where a high percentage of milk qualifies for the nearby differentials the producers who participate derive little net gain except for the pool tightening effect of the lower blended returns in the outer zones. Thus, order provisions for nearby differentials of this magnitude can and do effectively limit access to the pools.

"To accomplish both recognition of historical patterns in the distribution of funds, and at the same time to minimize the pool tightening effect of an arbitrary nature, nearby differentials could be main-

tained but varied inversely with the percentage of pooled milk used in Class I. Thus, the rate would be very low or possibly zero when a high percentage of the pooled milk was used in Class I and relatively high when fluid utilization falls to a low level. Such a procedure would tend to modify somewhat the effect of decreased utilization on the prices of nearby producers, and thus protect to some degree their prior market rights and their capitalization of these rights into land values by giving them the advantage of a priority on the share of the receipts from the pool. In other words, their blends would be more stable and fluctuate less widely as Class I utilization increased or decreased. At the same time the access-limiting effect of nearby differentials would be more flexible and would vary according to the utilization in the markets. With low utilization the blend price depressing effects of nearby differentials would be greater and the barrier to additional producers' supplies would be stronger than when the opposite was the case.

"This principle is recognized in the provisions for nearby differentials under the present New York-New Jersey order, but not under the other orders which provide for such payments."

Exception by Swonger

C. W. Swonger, Research Economist of the New England Milk Producers' Association and an outstanding member of the Nourse Committee, disagreed with many of the foregoing views as seen from the following quotation from his note on the subject which was published with the Committee's report:

"Apparently nearby differentials are acceptable, if they apply to a relatively small proportion of the milk, but otherwise they constitute an unwarranted 'burden' on the pool. In Boston, nearby differentials apply to about 6% of the milk in the pool, or considerably less than New York. They apply to a much larger proportion of the milk in other markets of southern New England for the simple reason, as stated, that there are relatively more nearby producers. Yet their effect is the same, in Boston or Connecticut, to establish a par-

ticular pattern or relationship of prices, as between nearby and more distant producers, which is identical in both markets. Elimination of the nearby differentials contained in the Connecticut order would aggravate the price disparities in relation to other surrounding markets.

"In this connection, the report suggests that 'nearby differentials could be maintained but varied inversely with the percentage of pooled milk used in Class I.' Such a system as suggested would result in serious distortion of blended price relationships between markets in New England and New York, both to nearby producers and those located more distant from the market. Reference is made to the uniform pattern of nearby differentials used in New England markets. Any deviation of the type proposed would, for instance, depress blended prices to nearby producers in Connecticut, relative to Boston or New York, and raise blended prices to Connecticut producers in more distant zones, substantially above Boston or New York. It would create price disparities rather than remove them, as between producers similarly located with respect to the market.

"If we accept nearby location differentials as a fact of life in New England and New York, it follows that 'similar patterns of utilization' would result in wide disparities in 'uniform prices' as between producers similarly located with respect to the market, and vice versa. We cannot have it both ways. Of the two, it seems to me that approximate uniformity of blended prices is far more important, and competition tends to achieve this result."

Proposals 1 and 16 would reduce the present 54¢ difference between city and Zone 21 plant Class 1 and blended prices, 40¢ of which is conceived to represent the approximate railroad tank car freight rate from Zone 21 to Boston, 1¢ of which is the no longer existent 3% Federal transportation tax, and 13¢ of which is conceived to be the extra cost of receiving milk from producers at a country plant compared to that at a city plant. Proposal No. 22 would increase the nearby farm location differentials by the amount of any reductions stemming from action on Proposals 1 or 16.

Uniform Differentials Proposed Again

A proposal to give to nearby producers the highest possible location differential, figured from any one of the five New England markets, regardless of the market to which his milk is taken, was considered at the April 2-4, 1962, hearing on the New England orders. In its decision the USDA concluded that the record of the hearing "does not contain evidence that is sufficiently exploratory or comprehensive in nature to support a substantial deviation from the present design of the nearby farm differential provisions." The subject will be reviewed at the November hearing as Proposal No. 21:

"Amend the nearby farm location differential provisions of all the New England Federal orders to provide that payments for milk produced on farms located in New England will be subject to differentials to the following extent.

1. Any producer whose farm location would now entitle him to a differential of 46¢ per hundredweight under any New England order shall be entitled to a differential of 46¢ under whichever New England order the milk is delivered.

2. Any other producer whose farm location would now entitle him to a differential of 23¢ per hundredweight under any New England order shall be entitled to a differential of 23¢ under whichever New England order the milk is delivered."

The large color map in the March issue of the REVIEW shows the existing nearby farm location differential areas for the five New England Federal order markets.

Exhibit 93
PROPOSAL 52

Massachusetts Cooperative Milk Producers Federation, Inc.

We are unequivocally opposed to Proposal 52 whether or not it be coincident to a merger of any or all of the New England orders.

It seems pointless for us to include in our testimony any further analysis of the circumstances and the evidence which led inescapably and justifiably to the original incorporation of farm location differential payments at current rates in the Boston order initially and later in each of the other New England orders upon promulgation. Exhibit 24 constitutes an adequate basic record for this purpose taken with direct testimony already given in this hearing by Mr. Lee for NEMPA and by Mr. Geyer for CMPA.

It does appear, however, that some additional analysis of what we believe to be the basic facts as well as a sound critique of terminology is called for. The facts are that, during the time antecedent to the inception of federal regulation, milk dealers were paying more for nearby milk than for distant milk, not necessarily because of its intrinsic value as milk was greater but because of its geographical origin. This higher rate per hundredweight was not arrived at by milk dealers then through the process of computing a distant price and adding thereto a premium or differential in order to arrive at a final figure. The current use of the word "differential" can therefore be misleading in itself, unless one remembers that originally it meant only that the prevailing prices for nearby and for distant milk were different and by an amount which was determineed probatively to be 46¢ in some instances and 23¢ in others. There was no evidence then, nor has there since been any new concrete evidence developed, that what became a "farm location differential" in the New England orders was ever paid to nearby milk producers by the handlers themselves, except as an inseparable component of a higher going price for milk.

Given the presence of such price stratification as did exist in the market at the time, the Secretary appears simply to have decided, in line with the Act's prescription that a determination of parity prices is a prerequisite, that such federal regulation as was to be instituted in the Boston marketing area must, in its provisions governing the determination of prices to producers, give recognition to the then existing price structure which was an undeniable and salient feature of pre-order marketing procedure. We cannot now conceive of any manner in which this previous relationship of prices could have been preserved in a market wide pool except through the specification by regulation that nearby producers would continue to receive a higher rate of payment for milk and that such payments would continue to be an obligation of the regulated pool inasmuch as, before regulation, they had been the result of simple economics in the milk market which was to be pooled. The established higher monetary value of nearby milk in the open market prior to federal regulation was thus maintained with the inception of the regulated market by means of provisions requiring the allocation to such milk of pool funds in a manner designed to preserve a prior status quo, or uniformity, of price.

Section 608c(5)(b) of the Act provides as follows:

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered; subject, in either case, only to adjustments for * * *

TABLE I

1962 PRICE COMPARISONS

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct. *	Nov.	Dec.
Federal Order (City Plants)												
Class I	$6.17	$6.17	$6.17	$5.73	$5.51	$5.51	$6.17	$6.39	$6.39	$6.39	$6.39	$6.39
Class II	3.482	3.470	3.278	3.041	3.008	3.043	3.22	3.303	3.264	3.287	3.31	3.309
Blends*												
Order 1	5.74	5.68	5.54	5.01	4.95	4.81	5.39	5.70	5.63	5.73	5.79	5.68
Order 6	5.45	5.43	5.39	4.91	4.83	4.81	5.32	5.58	5.77	5.87	5.83	5.75
Order 7	5.65	5.64	5.57	5.05	4.87	4.94	5.44	5.86	5.88	5.94	5.60	5.64
Order 14	5.65	5.64	5.58	5.14	4.95	5.02	5.77	5.98	5.89	6.11	6.12	5.79
State Order												
Class I	6.27	6.27	6.27	5.83	5.61	5.61	6.27	6.49	6.49	6.49	6.49	6.49
Class II	3.018	3.016	3.011	2.908	2.89	2.884	2.895	2.885	2.903	2.874	2.884	2.881
Average Composite	5.95	5.94	5.953	5.467	5.266	5.232	5.956	6.154	6.049	6.123	6.14	6.011
Difference between federal order city plant blend (to 46¢ zone producers) and state order average composite:												
Lesser	.21	.26	.373	.417	.316	.212	.186	.174	.159	.012	.02	.221
Greater	.50	.51	.563	.557	.436	.422	.636	.574	.419	.393	.54	.371

SIMPLE AVERAGES: Lesser difference, $.214; greater difference, $.493

*To producers in 46¢ farm location differential area

Source: Market Administrator's Monthly Statistical Reports, Reports

TABLE II

COMPARISON OF 1962 PERCENTAGES OF ASSIGNMENT TO CLASS I
(Producer Receipts)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Order 1	61.2 (High)	59.2	56.3	48.7	47.0	44.0 (Low)	51.4	57.1	55.4	59.0	60.8	57.2
	Swing (Low to High) - 17.2											
Order 6	71.8	70.9	71.9	68.4 (Low)	71.7	72.1	71.1	74.3	79.3	82.6 (High)	81.1	78.5
	Swing (Low to High) - 14.2											
Order 7	75.2	74.6	74.5	68.8	68.3 (Low)	69.2	68.5	77.9	79.4	80.1 (High)	69.9	72.7
	Swing (Low to High) - 11.8											
Order 14	68.7	68.5	69.2	67.1	65.3 (Low)	67.6	76.2	77.8	74.8	84.9	85.0 (High)	70.1
	Swing (Low to High) - 19.7											
State Order*	90.2	89.9	90.3	87.6	87.4	86.1 (Low)	90.7 (	90.7 High)	87.7	89.6	90.3	86.7
	Swing (Low to High) - 4.6											

*Computed from figures in Table I
Source: As stated for Table I

The following material is among that designated by the respondents. Petitioners contend that this material is not of record and the printing here of this material does not constitute a waiver by petitioners of their objections to the material as not properly before this Court. Petitioners also reserve the right to request that the Court assess the cost of printing this material to the respondents. With respect to the plaintiffs' summaries of administrative proceedings, petitioners offered to stipulate to print in the appendix any testimony either party considered relevant which had not been certified to the District Court below. That offer was rejected by respondents.

CHARLES PATRICK RYAN
1334 G Street, N.W.
Washington, D. C. 20005

March 15, 1967

Klagsbrunn & Hanes
1200 18th Street, N.W.
Washington, D.C.

Attention: Lawrence D. Hollman, Esq.
Carlyle C Ring, Jr., Esq.

Gentlemen:

I am in receipt of notification from the U.S. District Court that the motion to intervene as defendants in the case of Russell Allen, et al. v. Orville Freeman, C.A. No. 3379-66, has been denied by the Court, the said motion having been filed by you in behalf of eight individual nearby producers.

It would be appreciated if you would advise me as soon as possible concerning whether you desire to file a brief as amicus curiae in the proceedings in behalf of your clients.

Very truly yours,

/s/ Charles Patrick Ryan

Item 34 STERLING 3-0004

Law Offices of
CHARLES PATRICK RYAN
400 Prudential Building
1334 G Street, N. W.
Washington, D. C. 20005

May 8, 1967

Lawrence D. Hollman, Esquire
Klagsbrunn & Hanes
1200 18th Street, N. W.
Washington, D. C. 20036

Re: Allen, et al. v. Freeman

Dear Mr. Hollman:

I have received a copy of the Order of the U. S. Court of Appeals denying the motion of Frederick T. Zuber, et al., for summary reversal of the Order of the District Court refusing leave to intervene in the above case.

On March 3, 1967, I stated in the plaintiffs' opposition to the motion for intervention that I would consent to the filing of a brief amicus curiae by Mr. Zuber, and I filed a formal consent thereto on March 17, 1967. At that approximate time I also sent you a letter in which I inquired whether you desired to file such a brief, since the motion for intervention had been denied. I requested an expeditious response to preclude any additional delay, and I believe that your reaction to said offer was of a negative nature.

If you now desire to file such a brief, I would not interpose any objection to the same, provided that it was filed and personally served upon me by 5:00 p.m. on May 11th. Any later date would preclude me from filing opposition thereto and would probably prevent the Court from adequately reviewing the same.

You will recall that I facilitated consideration of your appeal on an expedited basis, and I also stipulated to the hearing of your motion in the District Court on an expedited basis—even though Mr. Ring's request for the latter was made in the evening at my home with an alternative of a preliminary hearing the next morning rather than the following day. Time is now really of the essence, but I still wish to accord Mr. Zuber, et al., an opportunity to present any defense that may be appropriate, consistent with the rules and without waiver of any objections of any nature that the plaintiffs might choose to present in this or any other proceeding involving the same or other parties.

Very truly yours,

CHARLES PATRICK RYAN
Charles Patrick Ryan

cc: Irwin Goldbloom, Esq.

Item 35 STERLING 3-0004

Law Offices of
CHARLES PATRICK RYAN
400 Prudential Building
1334 G Street, N. W.
Washington, D. C. 20005

April 20, 1967

Irwin Goldbloom, Esq.
U. S. Department of Justice
10th & Pennsylvania Ave., N. W.
Washington, D. C.

Re: Allen, et al., v. Freeman
Civil Action No. 3379-66

Dear Mr. Goldbloom:

Enclosed is a copy of the plaintiffs' summary of the testimony presented during the 1963 promulgation hearings involving the Massachusetts-Rhode Island milk Order. The proposed brief of Dairymen's League Cooperative Association, Inc., applicant for leave to file a brief amicus curiae, states that the differential in this case, unlike that in *Blair*, "was not designed to compensate for any such loss of the fluid milk market". The testimony set forth is for the primary purpose of rectifying this possible inaccuracy, and the statements of those in favor of the nearby differential have been utilized in this connection. The only reference that I have made concerning testimony in opposition to the differential is that of Mr. E. L. Tipton, economist for Cooperative Dairy Economics Service, and the same is illustrative rather than exhaustive of the testimony of this nature.

I believe that all of the records references are in the volume of excerpts of the administrative record previously filed in the case, with the exception of that relating to the brief or paper filed by the Government in the 1937 Boston

order hearing, and the latter is attached to the enclosed summary for your convenience.

• • • • • • • • • • •

I understand that the Government has certified the entire administrative record of the 1963 hearings, and I would appreciate being advised as to whether you consider any other hearing records necessary in this proceeding.

Very truly yours,

CHARLES P. RYAN

Plaintiffs' Summary of Record of 1963 Promulgation Hearing

The following summary of the testimony presented during the 1963 promulgation hearings resulting in the Massachusetts-Rhode Island milk order, concerning the nearby farm location provision of said Order, is set forth for the convenience of the Court, in that the excerpts from the administrative record are quite lengthy and contain no index or other statement of contents that would reflect the nature of the testimony therein.

In view of the fact that the record of the 1937 Order for the Greater Boston Area is not as voluminous, and inasmuch as many of the same individuals gave the same testimony in the hearings in respect to the milk orders that were consolidated (Southeastern New England, Worcester and Springfield) into the Massachusetts-Rhode Island milk order as they gave in the said 1963 promulgation hearings for the present Order, the same is not set forth herein. If the defendant regards the same as necessary in these proceedings, the plaintiffs will furnish a summary of the same for the convenience of the Court. The stated former milk orders are found in the Volume previously furnished by the defendant herein, and a portion of the 1937 hearing in respect to the nearby differential is also found as an exhibit in the administrative record

of the 1963 promulgation hearings resulting in the present milk Order.

The plaintiffs have also attached hereto excerpts from the brief of the Government filed in the 1937 hearings, and all of the foregoing should be of assistance to the Court herein.

The following individuals testified in favor of the nearby differential provision of the Order during the 1963 hearings:

1. JAMES D. LEE, economist for New England Milk Producers Association and formerly an economist with the Market Administrator's office in Boston, testified that the nearby differential payments "have been justified over the years as a recognition of the historical pattern of prices which existed prior to regulation, or as compensating nearby producers for sharing a part of the fluid milk market . . ." (R., pp. 3393, 3991-93). The brief of New England Milk Producers Association (Exhibit 77) also states that the differential payments are for the purpose of "compensating nearby producers for sharing a part of the fluid milk market which they formerly enjoyed, with producers more distant from the market".

Mr. Lee referred to the Class I (fluid milk) bases that were assigned to nearby producers under the license program of defendant, initially applying to 85% of their milk and then to 100% of the same "in an effort to gain enforcement support from the Massachusetts Milk Control Board". (R., p. 3408). He also stated that the effect of the differentials is "to establish a particular pattern or relationship of prices as between nearby and more distant producers, which is identical for the five markets". (R., p. 3394).

Under cross-examination, Mr. Lee acknowledged that evenness of production "could be compensated for only under a base rating which we do not have", and that dis-

tant producers should be equally compensated if they have even production. (R., p. 3981).

He also acknowledged that the factors enumerated by Dr. Ellsworth Bell concerning value of nearby milk and resultant justification of the nearby differential in 1937 are not present today. (R., p. 4002). Mr. Lee maintained that "accessability" of nearby milk was the present reason for the differential. (R., pp. 3991-4002). However, he admitted that a handler would look to the cheapest source for a regular and quality supply of milk. (R., pp. 1718-1727).

Dr. HARRY P. YOUNG, economist for Local Dairymen's Cooperative Association of Rhode Island, referred to the base ratings formerly given to nearby producers that returned to them a Class I or fluid price for their milk, the distant producer receiving a composite price consisting of the remaining Class I price and the Class II price for their milk, (R., pp. 2322, 2327, 2328), and he regarded the differential as a continuation of such payments based upon the use value of nearby milk for Class I or fluid use. He justified the differential on the additional ground that small handlers could not bear the added costs in purchasing upcountry milk (R., p. 2326), but he fails to mention that the distant producer bears such handler's cost of paying a differential to the nearby producer as an alternative to purchasing upcountry milk, and he admits that handlers would not pay more for nearby milk today. (R., p. 2330).

Dr. C. W. PIERCE, economist from Pennsylvania State College, also testified for Connecticut Milk Producers Association, Modern Milk Marketing Association and Local Dairymen's Association. He testified concerning the use of nearby milk for fluid purposes as justification for the differential (R., p. 2641). Dr. Pierce also stated that milk prices are higher because of governmental regulation, but he illogically maintains that only the nearby producer should be accorded this governmental benefit. (R., p. 2647).

Dr. STEWART JOHNSON, economist, also testified for the foregoing organizations, and he stated under cross-examination that the nearby differential was based upon the nearby producers' greater utilization of his milk for Class I or fluid use, and that the differential was to compensate the nearby producer for the loss of such Class I or fluid use sales in a marketwide pool. (R., p. 4066). Dr. Johnson also acknowledged that the effect of the Connecticut differential was to keep dairy farmers in other States from shipping into the Connecticut market. (R., pp. 4071-72).

Dr. DAVID A. CLARK, economist at the University of California, also quoted from the Secretary's decision promulgating the Connecticut milk order in respect to justification for nearby differentials. (R., p. 2525). He maintained that the differential was to compensate nearby producers for sharing fluid utilization under marketwide pooling of milk (R., pp. 2535, 2538). Dr. Clark also testified that the Connecticut order was promulgated because the local supplies of milk were being replaced by cheap, unregulated milk (R., p. 2539), and he acknowledged under cross-examination that the nearby differential had the effect of preventing the free flow of milk (R., p. 2542). Dr. Clark further acknowledged that he did not really know if local producers had received preferential treatment prior to State regulation (R., pp. 2550-52), and he admitted that any such preference in respect to the payments would have disappeared, in the absence of Federal regulation (R., pp. 2552-53).

Dr. Clark maintained that the existence of the differentials for several years was reason for their continuance, but he acknowledged that nearby milk had no additional value or worth over distant milk at the present time, (R., pp. 2539-41), and that the justification for the differential could require re-examination.

Mr. WILLIAM J. NEWMAN, Local Dairymen's Cooperative Association, testified that the differential should be increased, referring to the higher prices that nearby producers previously received under State orders (R., pp. 3750, 3770-71), and to the utilization of nearby producers' milk for fluid purposes. (R., pp. 3751-54). He also acknowledged that the nearby differential is to compensate nearby producers for sharing Class I or fluid milk sales under marketwide pooling. (R., pp. 3757, 3769).

Mr. FRED BRIDGES testified for the Worcester Milk Dealers Council, stating that nearby milk had an extra value because of its accessibility, but he admitted that this factor constituted a possible value to a handler. (R., pp. 4129-30). He also admitted that the differential was to compensate nearby producers for sharing their high Class I percentage under marketwide pooling, and that their higher prices had been due to such use. (R., p. 4139).

Mr. CHRISTOPHER B. SYKES testified that he did not know why the nearby producer received higher prices than distant producers prior to federal regulation (R., pp. 4032-34), and he acknowledged that evenness of production would have no application if a distant producer's production was as even as that of a nearby producer. (R., pp. 4044-45). Mr. Sykes maintained that accessibility of nearby milk might justify the differential today, but under cross-examination by Mr. Chernauskas, Government counsel, he maintained that the differential provision should never be changed, irrespective of changes in the past 25 years. (R., pp. 4050-55).

Mr. HORACE B. WILDES, Dairy Committee Chairman of the Rhode Island Farm Bureau, acknowledged that the nearby differential is to compensate the nearby producer for sharing his fluid milk market with distant producers, and that the differential discourages distant producers from shipping to market. (R., pp. 2307-11).

A few of the foregoing individuals who testified in favor of the nearby differential also stated that production costs were higher in the nearby area, that taxes were higher in the State of Massachusetts, that the higher prices to nearby producers had been capitalized into farm or land values, etc., but they did not mention that the nearby producers received a higher price because of his location by virtue of both the transportation and direct delivery differentials that are included in the zone differential. Some of them acknowledged that these reasons did not justify payment of the differential by distant producers.

A number of those testifying maintained that nearby producers had never been paid a nearby differential as such, but that they had been paid an increased price over that paid to distant producers and that the differential represented the difference between such prices. They further stated that the purpose of the Act was to maintain the status quo in this regard. Although they maintained that handlers had never applied the differential as such, they failed to explain how it could then be regarded as a "market differential customarily applied by handlers".

Mr. KEN GEYER, General Manager, Connecticut Milk Producers Association, also testified for Modern Milk Marketing Association and Local Dairymen's Cooperative Association, and he adopted the testimony of Dr. Swonger, former NEMPA economist, that the differential payments "served to compensate nearby producers for sharing a part of the fluid milk market which they formerly enjoyed, with producers more distant from the market". (R., p. 2161). He quoted from the final decision of the Secretary in promulgating the Connecticut milk order on February 11, 1959:

> "The Federal order markets in New England and the New York-New Jersey market provide for similar differentials to their producers with nearby farms . . . . The differentials adopted recognized the higher per-

centage of the milk near to the market than of milk in the more distant zones which customarily has been used for fluid purposes. Nearby producers have been able to obtain a price higher, in relation to more distant producers, than can be accounted for by the advantage in the cost of transportation to market . . . ." (R., pp. 4463-64).

Under cross-examination, Mr. Geyer acknowledged that handlers would not pay the nearby differential today (R., p. 2166), and that such differential served to exclude Vermont dairy farmers from the Connecticut market, a fact which plaintiffs contend evidences the "trade barrier" aspect of the differentials in any market. (R., pp. 2163-64).

Mr. Geyer also referred to the justification and the findings made by the Secretary in 1958 in respect to the nearby differential provision of the Southeastern New England (R., p. 2168), which order was consolidated into the present milk order in 1964. The former milk order was the most important one consolidated into the Boston order, in respect to number of producers and area, and the Secretary's decision, 23 Fed. Reg. 8238, is included in the volume containing former milk orders and states as follows:

"Historically, dairy farmers in the States of Massachusetts, Rhode Island and Connecticut, because of their location with reference to the large population concentrations of New England have disposed of a substantially larger percentage of their production for fluid uses than have dairy farmers in the upcountry area. Hence nearby producers have been able to realize a price higher in relation to more distant producers than can be accounted for by the advantage in the cost of transportation to market. Under the marketwide pooling herein proposed and without some adjustment mechanism the nearby producer, notwithstanding, would be paid on the basis of the average

utilization of all milk on the milkshed rather than according to the utilization of his milk. Under a regulated market, however, he obtains the benefit of an established Class I price which may be higher than in the absence of regulation, and has assurance that his milk will not be displaced by cheap unregulated milk, from more distant sources .... The scheme of nearby farm location differentials and the amount thereof is identical with that employed in adjacent Federal order markets ...."

The testimony of E. L. Tipton, Economist, Cooperative Dairy Economics Service, representing about 9 cooperatives at the hearing in 1963, brought out the lack of authority under the Act for requiring the differential payments to be made by other producers, rather than handlers. He also maintained that handlers would not pay such differential payments today, and that they had turned to upcountry milk because of the excess charge of 7 cents in the zone differential for nearby milk—a fact which established that handlers would not pay nearby producers either 46 or 23 cents for their milk over the uniform prices. His testimony also related to the promulgation of the other milk orders, and to the question of nearby producers having an outlet for fluid utilization. (R., pp. 2125-50, Exhibit 55).

Respectfully submitted,

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From the Economic Brief of USDA, 1937

F. Equalization of fluid milk sales among producers

The use plan of payments for milk puts all handlers in the market on an equitable competitive basis, and equalization of fluid milk sales is intended to do the same thing for all producers. Equalization of fluid milk sales is simply an extension of a plan that has been employed by each handler and each cooperative creamery. If a creamery sold 75% of its milk as whole milk and the remainder as cream, it did not pay 75% of its producers the fluid milk price for all their milk and the remaining 25% the cream price for all their milk. Such a method obviously would have been inequitable. Instead each producer was paid the whole milk price for 75% of his deliveries and the cream price for the remaining 25%. Under the proposed amendment to Order No. 4 the fluid milk sales of the whole market are distributed among all producers in the milkshed in exactly the same way as though they were all members of a cooperative association which equalized its fluid milk sales among its members.

The lack of any plan for an equitable distribution of fluid milk sales among all producers has been one of the principal causes of unsatisfactory conditions in the Greater Boston Marketing Area during past years, for it has led to destructive competition among groups of producers. Under normal conditions in the Eastern markets, whole milk prices average approximately twice as high as the prices paid for milk reported for use as cream. However, the milk used as cream is of the same quality as the milk used for fluid milk and can at any time be sold as whole milk in competition with it. A handler's ability to pay his producers a favorable composite price, as compared with the price of competitors, has depended largely upon his not having so great a volume of surplus sales (in this case cream) as his competitors. If, by cutting prices, a group

succeeded in selling a large percentage of its milk as fluid milk, its composite price would be higher than that of another group that received the full market price but carried a larger percentage of the surplus. Thus it was that a handler could cut the price of fluid milk in the city and still pay a composite price in the country, as high or even higher than that of the competitors who did not cut prices.

A few simple examples will illustrate the situation. If the Class I price is $3.00 and the Class II price is $1.50, and if there is 60% of the total milk sold as Class I, then a group of producers carrying its share of the market's surplus would return to its producers per hundredweight as follows:

60 pounds as Class I at $3.00	=	$1.80
40 pounds as Class II at 1.50	=	.60
Composite price per hundredweight	=	$2.40

This group of producers has more surplus than it needs to take care of the daily fluctuations in its sales. Therefore, if it can contract to sell a portion of its surplus milk at any price above $1.50 per hundredweight, it will obtain a greater return for its milk. If it sold half of its surplus milk for fluid milk consumption at $2.25 per hundredweight, which is slightly more than one-half cent per quart under the market price for fluid milk, and still continues (a practice not uncommon in Boston, particularly in the wholesale trade), the return to this group of producers per hundredweight would be as follows:

60 pounds as Class I at $3.00	=	$1.80
20 pounds as Class I at 2.25	=	.45
20 pounds as Class II at 1.50	=	.30
Composite price per hundredweight	=	$2.55

This group will have undersold the market by more than one-half cent per quart and by so doing it will have increased its composite price to producers for all milk by $.15 per hundredweight. If the handler were a proprietary concern rather than a cooperative, he probably would continue to pay his producers approximately the same net price as competing dealers in the territory and pocket the increased return.

Normally, this group of producers will have increased its fluid milk sales only at the expense of another group in the market. Assuming that this other group carried originally the same amount of surplus, the return to its producers per hundredweight would now be as follows:

40 pounds as Class I at $3.00	=	$1.20
60 pounds as Class II at 1.50	=	.90
Composite price per hundredweight	=	$2.10

More likely, however, in order to retain its fluid milk sales and maintain its price to producers, the second group, as well as others similarly threatened, would lower its own price to whom the cut-price milk was offered. Eventually, before the cut-price group succeeds in placing its surplus milk at a cut price, it might have to offer it to several customers and thereby have forced down the price on fluid milk sales of several times the volume of milk which it has to offer. If any considerable amount of surplus milk is thus offered to the trade at a cut price, it tends to force the fluid milk if the fluid milk price were eventually reduced to $2.25 as a result of this price cutting, it would still be enough above the price of surplus milk so that the process could be repeated. It is by this method that competition among a few groups of producers or handlers has often reduced the net return to all producers in the Boston milkshed much below a fair market level. Sufficient control of milk markets to prevent such practices is highly

desirable from the producer's standpoint. In many markets, price cutting has been carried to the point that producers withheld their milk from the market, causing a shortage of milk in the market. It should be obvious that when price cutting is carried to this point, it is inimical to the public interest.

The history of the Boston milkshed has shown that no group of producers can be kept from participating in the fluid milk market. The different groups either cut prices and share the fluid milk market on a lower price level, or else they cooperate and share the market on a fair and reasonable price level. Equalization of fluid milk sales throughout the market entitles each group of producers to maintain its share of the fluid milk sales without price cutting.

The actual operation of the equalization plan is simply a means of distributing to all producers equally the value of the fluid milk sales in the market by all handlers. With a 40% surplus in a market, each producer should get surplus prices on 40% of his deliveries. The Class I and Class II sales are not distributed equally among handlers. One handler may have no Class I sales, yet his producers are entitled to Class I price for 60% of their deliveries. But another handler may sell 100% of his producers' milk as Class I and his producers, if they are to carry the same amount of surplus as other producers, should get Class I price for only 60% of their deliveries. The equalization is made by the several handlers paying to producers through the equalization pool the difference between the Class I and Class II price on 40% of their total sales and to pay their producers Class I price for 60% of their deliveries, and for 40%, the Class II price. The first handler pays his producers Class I price for 60% of their deliveries by receiving from the equalization pool enough money to enable him to pay producers for 60 percent of the milk received at Class I prices, and Class II price for

the remaining 40%. If a handler happened to sell exactly 60% of his milk as fluid milk, he would pay producers directly for 60 percent of the milk at Class I prices, and for 40 percent at Class II, rather than paying them partly through the equalization pool.

The whole plan works exactly as if all handlers paid into the pool the value of their Class I milk times the Class I price plus the value of the Class II milk times the Class II price, whereupon the total sum would be distributed equitably among producers according to their deliveries. The Administrator's office acts merely as a clearing house for transactions. Thus there remains room for any gains through superior quality or differences in efficiency of any individual handler or association of producers, because any gain from operations after the milk has passed the receiving room door is retained by the handler or cooperative and not shared by the rest of the market.

Summary of Hearing Record in Promulgation of Boston Order, 1936

Item 36

The initial milk order for the Boston marketing area was promulgated by the defendant effective February 9, 1936, but it did not contain the nearby farm location differential provision. It was suspended on August 1, 1936, and was reinstated and amended on August 1, 1937, at which time the nearby farm location differential provision was inserted into the milk order in place of the "base-rating" provisions of the 1936 order. (R. (1963 Mass.-R.I.), p. 470; 2 F.R. 1589). No provision was made for the issuance of recommended and final decisions at that time, the findings of the Secretary being set forth in the order.

The defendant found that in 1934, 90.8 per cent of the milk sold in the Greater Boston marketing area originated

in States other than Massachusetts and was inextricably intermingled with Massachusetts milk. (Order, Finding No. 1; R., p. 10). The promulgation hearing conducted on December 10-11, 1935, disclosed that 59.4% of the milk came from Vermont, 5.9% from New York, 12% from Maine, 13.3% from New Hampshire, 9.2% from Massachusetts and .2% from Rhode Island, but it was actually impossible to tell where the intermingled milk was from. (R. 10, 31-32).

The defendant also found "that the prices received by producers for milk sold in the marketing area were, for a long time prior to said hearings, at a level that gave such milk a purchasing power with respect to articles that producers buy considerably below the purchasing power in the base period;". (Order, Finding No. 3; R. 66). See also R. 66-67, 101.

The defendant further found that determination and payment of a "uniform" price through a market-wide equalization pool "founded upon a base-rating plan" was proper and reasonable, and "that the payment of *class I prices* for the basis of producers whose farms are within forty miles of Boston is a proper recognition of the economic position of such producers, due to the greater availability of their milk for *class I use.*" (emphasis supplied). (Order, Finding No. 4). An explanation of base-rating is set forth in the testimony of Paul L. Miller, Dairy Section, Agriculture Department (R. 16-20), and that of W. A. Bronson, economist for New England Milk Producers Association (R. 58-66).

An explanation of market-wide equalization is also found in the testimony of Mr. Bronson, who stated that handlers who are able to dispose of milk for fluid use force producers to give rebates, etc., in order to receive the Class I or fluid milk outlets (R. 58). He also stated that "Milk is a product having a value dependent upon the use to which it is

put. Milk used for fluid milk purposes has a value higher than milk used for cream or other by-product purposes." (R. 57-66). The giving of rebates, excessive hauling charges, etc., by producers to handlers who had a Class I or fluid milk outlet necessarily render any figures or statistics as to "higher prices" received by producers from such handlers of doubtful validity—since the quoted prices do not reflect the reduction caused by such factors.

It is apparent from the record that the Agricultural Department and the Massachusetts Milk Control Board were in agreement prior to the hearing that the Massachusetts producers were to be accorded a preferential position under the Order. In fact, the Government submitted an "Economic Brief" which purported to substantiate the position taken in this regard. The non-Massachusetts producers were actually fearful that legislation might be enacted precluding them from marketing their milk in the Boston market, in spite of the fact that Massachusetts milk comprised but 9.2% of the total milk, (R. 136, 179), and Charles E. Shepard, President of the Federated Dairy Association of Massachusetts, testified that one of the reasons for giving a preference to nearby producers was their intention of "becoming a menace to the enforcement of the agreement". (R. 362).

The Government acknowledged that under the base-rating plan and the proposed market-wide equalization the nearby producer would be accorded a preferential position which conflicted with the uniform manner in which such plans normally operated, and it is evident from the record that the explanation or definition of such plans was in conflict with the exception inserted therein. Mr. Miller of the Department acknowledged that under the base-rating plan the nearby producers would be paid a Class I or fluid milk price for their base milk, whereas the non-nearby producer would receive a blended or composite price made up of the remainder of the Class I price plus the Class II price. (R.

134-35). Mr. Miller attempted to justify the Class I or fluid price for the base milk of nearby producers by stating that "it should be noted that a producer whose farm is located near the market is in a position to supply Class I milk for use at all times, at less cost and distances . . .". (R. 135; Economic Brief, p. 119).

Mr. Miller admitted under cross-examination that he did not know if nearby producers actually did deliver their milk to the market but presumed that they did so. (R. 136). He also acknowledged that there were so many different types of base plans, methods of payments, etc., in the milkshed that "it is very difficult for you farmers to determine whether you, as an individual and a member of one group, are paid equitably in comparison with some other farmer as a member of some other group, because your bases of payments are somewhat, and often very different". (R. 18-19, 133-34). He further acknowledged that the purpose of a base-rating plan was to encourage more even seasonal production and that payments were made thereunder at a higher price for the producer's base, as determined by his deliveries over a representative period of time during the season of short supply, and that production over and above the base was to be made at Class II or surplus prices. (R. 17-18).

Mr. Bronson of the New England Milk Producers Association testified that a larger portion of the money from the pool is to be given to the "even" producer whose milk is more valuable because of such evenness of production (R. 63), but no consideration was given to individual producers in different parts of the milkshed whose production was "even" in respect to receipt of the Class I price for their base milk—except as to nearby producers who received such price irrespective of the evenness of their production.

Ernest H. Bancroft, president of New England Dairies, testified that nearby producers had a preferred position

because of the transportation factor and because they could become dealers, and he stated that the other dairy farmers should take what the nearby producer is willing to give them. (R. 282-83).

Charles E. Shephard, president of Federated Dairy Associations of Massachusetts, testified that nearby producers should have a preferred position in the pool because they have a higher cost of production, they may become dealers, and they can menace the enforcement of the milk order. (R. 357, 362).

Mr. Blandi testified that the nearby producer had a preferred position by virtue of the lower transportation cost, but he failed to mention that such producer was already compensated for this factor. (R. 208-10).

Mr. G. D. Bailey, producer and director of Bethel Creamery, testified that producers within the 40 mile zone could not supply the market with their limited production, but he stated that "However, if we antagonize them enough to keep this thing up, it is possible for them to get legislation through in their state to cause a lot of harm to the Vermont producers". (R. 179).

Howard Selby, manager of United Farmers Cooperative Creamery of Morrisville, Vermont, testified that the preference accorded to nearby Massachusetts producers will exempt them from the necessity of equalizing their production, in that they will receive a Class I or fluid milk price for their base milk rather than the blended price of Class I and Class II sales. He stated that nearby producers already had an advantage in not having to pay country stations' charges for receiving and handling their milk. Mr. Selby maintained that "no plan should give any preference to any one section over another", and that it was erroneous to contend that the preference given to the nearby producers "is such a small factor in Massachusetts that we can afford to wink at it". He stated that Massachusetts

milk constituted only 8% of the milk in the Boston market two years ago, then 9.2%, and now 14% of the total, maintaining that the preference in price given to nearby producers would encourage them to produce more milk with resultant lowering of the blended price that non-nearby producers would receive. He stated that perhaps the base of 75% would be lowered to 60% after one year and then to 40%, but he contended that there was no assurance of this and that the preference given nearby producers would be relinquished by them. (R. 121-23).

Mr. E. A. Lawson, a producer from Lyndonville, Vt., testified that the nearby producer would be accorded a preference by virtue of the payment of the Class I or fluid milk price for his milk, and he illustrates the fact that few producers could comprehend the technicalities of the Government's proposals. (R. 129-30).

Mr. William C. Miller, a producer and attorney for Cabot Farm Cooperative, testified that Massachusetts producers did not have a prior right to the Boston market, that they were being subsidized by payments from the pool belonging to all producers, and that they received a transportation difference. (R. 207-10). Mr. Tator, the Market Administrator, in reply to Mr. Miller's testimony, stated that the nearby producer was not being given everything he asked for, stating that "it is different from that what they have demanded. They have demanded, through their representative, that every drop of milk they make should be paid for at the Class I price." (R. 210-11). Mr. Tator maintained that his office did not recognize State lines, but he acknowledged that the "Massachusetts position" was that Vermont dairy farmers were a "tariff problem". (R. 211). He also stated that figures were not available to determine to what extent the nearby producers should receive a higher price, but that such preferential price would be lowered if the figures disclosed that it was not warranted. (R. 210-12).

In respect to the evenness of production factor, it was acknowledged that the dealer or handler can pay for the same by the savings that he makes by virtue of lower labor costs and less equipment used when production is even. ("The Price Structure of Milk", pp. 30-31).

From the foregoing testimony, the defendant Secretary found in the February 9, 1936, milk order that nearby producers, those within 40 miles of the Boston market, should receive a Class I or fluid milk price for their base milk "due to the greater availability of their milk for Class I use".

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Summary of Administrative Hearing Record Amending and Reinstating Boston Order 1937

The Agriculture Department also submitted an "Economic Brief" with respect to the proposed amendment and reinstatement of the Greater Boston milk order during the 1937 hearings. It noted that the source of milk for the New England supply area was as follows: Vermont, 52% (decrease of 7.4%); Massachusetts, 13.4%, (increase of 4.2%), Maine, 14%; New Hampshire, 12.8%; New York, 6.9%; and Rhode Island, .1%. (Brief, p. 10). It noted that in 1936, 86.6% of the milk for the Greater Boston marketing area came from States other than Massachusetts. (Brief, p. 16). This figure had decreased from the 90.8% originating from other States in 1934, but no mention was made as to whether the Massachusetts increase and the Vermont decrease were attributable to the preferential

price treatment accorded to "nearby" Massachusetts producers under the 1936 milk order. The brief, pp. 2, 4, also noted that prices had declined from 1929-33 by 36.8% in Massachusetts, 39.9% in Maine, 43.9% in New Hampshire, and 47.4% in Vermont, in respect to the purchasing power of dairy farmers for those commodities purchased by them, whereas the decline in price for such commodities was not so extensive.

This brief also noted at page 22 that "The heaviest producing area is located in northwestern Vermont while the area within 100 miles of Boston is a rather light milk producing area", and it further stated in respect to the supply area for the Greater Boston marketing area that "Much of the milk produced in Massachusetts is used in other markets in Massachusetts. However, there is some milk shipped to Boston from the western part of the State and from some producers located nearby Boston".

The Department brief also discussed the concept of equalization or market-wide pooling authorized by the Act at pp. 82-84, and it stated in part as follows:

> "The history of the Boston milkshed has shown that no group of producers can be kept from participating in the fluid milk market. The different groups either cut prices and share the fluid milk market on a lower price level, or else they cooperate and share the market on a fair and reasonable price level. . . . The actual operation of the equalization plan is simply a means of distributing to all producers equally the value of the fluid milk sales in the market by all handlers. With a 40% surplus in the market, each producer should get surplus prices on 40% of his deliveries. The Class I and Class II sales are not distributed equally among handlers. One handler may have no Class I sales, yet his producers are entitled to Class I price for 60% of their deliveries. But another handler may sell 100% of his producers' milk as Class I

and his producers, if they are to carry the same amount of surplus as other producers, should get Class I price for only 60% of their deliveries." (Economic Brief, p. 84).

On page 94 of said brief, reference was made to a study in which a sample of 15% of the producers in the market was taken, and the producers classified as even or uneven. The report stated:

"It was found that only around one-fifth of the producers in the market could be called even under this definition. These even producers were scattered throughout the milkshed so that, for the most part, their evenness was completely offset by the irregularity of their neighbors. (See table 38)."

In spite of the fact that base-rating and evenness of production relates to the individual farmer's deliveries over a representative period of time, rather than to 15% of the producers or any particular "group" of dairy farmers whose farms are located in a particular area, the Department brief proposed that an exception be made to the equalization plan or market-wide pooling to allow "nearby" producers within 1-40 and 41-80 mile zones from Boston to receive a differential of 36 cents and 18 cents per cwt., respectively, in order to accomplish the purpose for which the former base-rating plan in the 1936 milk order was intended. (p. 94).

Mr. E. H. Jones, Commissioner of Agriculture for Vermont, testified in favor of true equalization and stated as follows:

"Now through a combination of circumstances and through strategy one group of producers and one group of dealers have obtained a potential monopoly of fluid milk sales and are able to pay prices better than their competitors; other groups carrying a surplus are hold-

> ing them back, and the prices which they are able to pay to their producers are so far below the cost of production that it seems to be this condition has gone just about far enough, and that a change is in order. I wish to make this statement, that a marketing system, or lack of system if you please, which permits one group of farmers to fatten while another group starves is unsound, inequitable, and unjust." (R. 81-84).

Mr. A. H. Packard, of Jericho, Vermont, also testified that the fluid market was under the control of a small group. (R. 98).

Mr. Alpin, Administrator for the Boston market, reiterated the allegations set forth in the "Economic Brief" concerning the evenness of nearby producers and stated that their milk was accessible to "small dealers". He maintained that the proposed differentials was to compensate for the fact that nearby producers had been able to get 36¢ and 18¢ in the two zones over the price paid to other producers, for the aforesaid reasons, and that it was intended to give them the same advantage under the amended milk order. (R. 129). He referred to the price preference as a "location differential". (R. 105-06), but he offered no explanation of how the Government's proposal could be authorized under the Act. Mr. Miller from the Department also stated to the same effect, but he acknowledged that "It is perfectly true out beyond these zones there are farmers who are perhaps as even producers of milk and as desirable sources of supply for a handler . . ." (R. 362). Mr. Miller also stated as follows at page 414:

> ". . . That really we were faced with the fact that the milk was already here and the problem is, therefore, a way of pricing milk in determining the proceeds of the sale of milk among farmers so as to prevent excess supplies of milk from pulling our price levels

all out of kelter, and that while the people who now have the Class I market or who are relatively in a good position in the market may feel—may think that this scheme is bound to force them to share the market more generously than they will be required to without it, that is, after all, the question that needs to be thoroughly considered . . . and we musn't throw this thing out just because it provides for a systematic way of sharing the market because, after all, there is no way of avoiding sharing the market". (R. 414).

In respect to prices, Mr. Alpin apparently changed his views later in the hearing, in that he stated at page 425:

"You have heard the testimony here that these producer associations have nothing to say about the price of milk. When we were operating in Boston we were continually told by the dealers, the large dealers, that they had to own their milk as cheap as their competitors, and that they intended to own their milk as cheap as their competitors. That being their policy, and it has been their policy for years, and they admitted under their own testimony yesterday that the dealer sets the price and the producers have nothing to say about it. I think that you have very little assurance as to what the price will be without a Federal order . . .". (Record 425-26).

Mr. Greer, an attorney representing various dealers, testified that Boston has 2 large dealers who control 60% of the sales in the market. (R. 442). He did not dispute the nearby producer's right to a price preference, but stated that such producer was compensated for his nearness to market by the transportation differential and that he would receive the proposed nearby differential under the Order whether he gets his milk to market quicker or slower than the distant dairy farmer. (R. 359-60). He also stated

that the provision cannot be enforced "as a matter of law", and that "the Federal authority cannot write into the order any provision which by its terms limits a preference to a state line, and it is obvious, also, that the thought is to achieve that result without putting it into words". He called the differential proposal "a make-shift device, a stop-gap which will not stand analization in the long run". (R. 358-59).

Henry T. Broderick, attorney and producer from Sterling, Mass., who represented other producers within the 40 mile zone, stated in part as follows at page 101 of the record:

> ". . . I cite to you that I am supported by your Chief Solicitor Blandin who has asserted, and we have a stenographic report of his comments, that he is prepared to defend this attitude of ours by virtue of custom through long years, in this market. . . . It is a matter of record that the milk shipped by my clients has been used daily for fluid purposes for many years by our customer. It should be used daily for fluid milk".

E. Frank Brannon, a producer from Fairfield, Vermont, testified against equalization of returns to dairy farmers, maintaining that they could get higher price without it, and that the independent producers in Vermont marketing their milk through a dealer with a substantial fluid milk business would sustain a heavy loss through equalization. (R. 114-15).

Mr. Williams, of Newport, Vermont, representing 3 producer organizations, was also against equalization and he said that producers in his group in the 200 mile zone who are receiving better prices than their neighbors should retain them, but he also acknowledged that a small group of producers could not control higher prices. (R. 57-59, 62-63).

Mr. Mm. C. Walker, a producer from Cabot, Vermont, testified in favor of equalization (R. 401-08), and Mr. T. F. Macauley of Shoreham, Vermont, stated that certain producers who have a large share of the fluid market should share the same equally with other producers, citing the increased costs of grain, etc., higher labor and increased retain prices. (See Briefs & Statements).

Judge George Thompson, General Counsel for Bellows Falls Cooperative Creamery, questioned the authority for the differential under the Act and Constitution (R. 237-38), and the brief submitted by the cooperative stated as follows:

> "Section 4 provides for differentials (for Massachusetts milk) which are without the provisions of the Act and therefore beyond the powers of the Secretary. The Act contemplates a uniform price for all milk of the same class to all producers whose deliveries are within the jurisdiction of the Act. The differentials proposed are not adjustments by differences in cost of moving milk into the market, incidental to location, but are arbitrary additions to the price as an added value of the commodity. "Nearby milk" has no value in excess of any other milk which on arrival complies with the market's requirement of quality. Its only advantage in the market is a lower cost of delivery. This difference is provided for in Article IV and Article VIII. The provisions of Section 4 as proposed is not only without economic justification, it is an unlawful discrimination in price between producers of the same class of milk, and against the letter and spirit of the Act. The desire of the management of the proponents to cover up a "take" from their own producers to bait some Massachusetts farmers into voting for this Order is not a ground sufficient to warrant this discrimination expressly provided for."

Even the Report of The Massachusetts Milk Control Board of November 30, 1936, acknowledged at page 9 thereof that:

> "In the opinion of the Board, Massachusetts producers cannot expect over any long period of time special protection against the competition of producers in other States. . . ." (Exhibits)

However, John L. Carten, speaking for a "Nearby Producers Association", insisted that "We must be protected against seasonal surplus", which was a manner of saying that nearby producers wanted a Class I or fluid milk price but did not wish to carry any of the burden of the surplus in the market. Mr. Carten maintained that nearby producers had even production, and "have much more expenses, much more trouble down here that has to be compensated some way, and the local producers—there is always a row in the market unless they are compensated in some way". (R. 281-85). He also referred to the difference in price between the nearby producers and those of the NEMPA in the 191 mile zone as illustrated by figures from one producer, neglecting to refer to the many different ways and amounts of payment for milk in the milkshed, and claimed that nearby producers should get a Class I or fluid milk price for at least 90% of their milk or else a cent a quart extra—46¢ per hundredweight. (R. 281).

Mr. Wesley Bronson, economist for New England Milk Producers Association, testified in favor of the differential, stating that from 1927 through 1930 producers delivering to Deerfoot Farms Company at Smithboro, Massachusetts, received a higher price for their milk, as did those delivering from 1923 to 1932 to the J. B. Prescott Company at Bedford, Massachusetts. He did not appear definite on the explanation of such figures, and he did not refer to the fact that some handlers had a higher percentage of fluid use than other handlers. Neither did he refer to the wide

range of prices paid in the milkshed, the many plans under which producers were paid, and other important factors such as rebates, etc. However, he appeared to contradict himself when he stated that producers in the 40 mile zone had received $3.10 per cwt. under the Federal order but only $2.46 under the Massachusetts state order upon suspension of the 1936 Federal order. (R. 268). No explanation was forthcoming as to how this coincided with the argument of nearby producers that they received higher prices prior to Federal regulation and therefore should receive the same under the Federal order.

Mr. Shepard, of the Federated Dairy Association of Massachusetts, testified that "We believe that as long as there are large supplies of fluid milk either within or without our State available for sale to our Massachusetts markets the price of milk in any part of our State is in jeopardy". Although Mr. Carten of the Nearby Milk Producers Association had testified that base-rating was completely unacceptable to nearby producers, Mr. Shepard stated that the abandonment of base-rating had put nearby producers to a disadvantage. Like other witnesses in favor of such differential, it was stated that "figures" from nearby producers showing their higher prices would be submitted in or with a brief rather than during the hearing where other participants could question the same. (R. 294-96, 299).

Mr. Alpin, The Boston Administrator, acknowledged that it was intended that nearby producers should receive such differential, due to such "higher prices" received by them "which cannot be entirely accounted for by the freight rate or the country station allowances". (R. 232). (R. 356).

A brief filed by the Secretary of the Nearby Milk Producers Association stated that unless they received the 46¢ per cwt. instead of the proposed 36¢ per cwt., the nearby producers "will swarm to the Office of the Market Administrator to remind him of it and demand an adjustment".

Another brief submitted by Mr. Branch, extension economist for the Mass. State College purported to justify the differential on the basis of alleged increased taxes, costs of production, etc., in Massachusetts. Another brief by Ellsworth Bell, holding the same position at said college, maintained that 15% of the milk used in the Greater Boston area is supplied by Massachusetts producers and 87.6% of it was sold for fluid use, whereas 73.7% of the Vermont milk was used for fluid purposes. He stated that "adequate location differentials must be allowed to those sellers near to market thereby making it unnecessary for any group to cut their offering price in order to obtain its share of the market proceeds of fluid sales". He also stated that "it is recognized that freight, country assembly expenses, container services, refrigeration and other charges are not required to the same degree with respect to milk produced nearby for fluid sale." He failed to illustrate how these savings to nearby producers justified an additional differential payment or to note that the nearby producer was already compensated for such factors, but also stated that nearby producers could retail their milk. (During the 1963 Massachusetts-Rhode Island administrative hearings, it was admitted that these factors were no longer (if they ever were) a justification for the nearby differential (R. 4002). and it was brought out during Mr. Bell's testimony during the 1949 administrative hearings for the Worcester, Mass., Federal milk order (R. 16-21) that he was not a dairy economist and knew very little once he was exposed to cross-examination concerning his direct testimony).

From all of the foregoing, the defendant Secretary found "That in view of changes in economic conditions since the date of the original findings, the payments to all producers and associations of producers delivering milk to all handlers of uniform prices for milk so delivered, without the use of a base-rating plan, but with the inclusion of special location differentials, is a fair and reasonable method of distributing

to producers the proceeds of sales of milk to handlers". (Order, Finding No. 2, 8/1/37). The Order gave 23¢ per cwt. to producers within 41-80 miles from Boston and 46¢ to those whose farms were within 40 miles, or such lesser amount as would equal $3.19 or fluid price.

Respectfully submitted,

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Summary of Promulgation Hearing Record for Worcester, Mass. Order

The promulgation hearing record that resulted in the Worcester, Mass. Federal milk order was discussed by the defendant in his Decision published in the Federal Register on November 23, 1949, (14 F.R. 7097), and his Decision in respect to the promulgation record of the Springfield, Mass., Federal milk order was also published the same date. (14 F.R. 7085).

Ellsworth W. Bell, agricultural economist, testified in favor of a nearby differential, but it was evident upon cross-examination that he knew virtually nothing concerning that upon which he had offered "expert" testimony. (R. 16-21, 38).

C. W. Swonger, economist for New England Milk Producers Association, favored the differential for the following reasons:

> "One is the fact of their existence under both the Boston and New York orders, and the fact that we have proposed a similar differential for Springfield. . . . A second factor is the existence of alternative marketing opportunities available to producers located in reasonably close proximity to the market. . . . This

would mean a loss of Class I sales to the pool, and rather than suffer such loss of sales, it has been considered desirable to recognize such alternative marketing opportunities in the form of a higher blend price to nearby producers. It is sometimes argued that this opportunity is less today, with expensive equipment and stricter Board of Health requirements relating to milk handling and distribution, but there are already a number of producer-handlers in the market. . . . A third factor has been that of more even supply. Nearby producers on the whole have done a much better job of adjusting the seasonality of their production to the requirements of their dealers and the fluid milk needs of the market. This is apparent from an examination of the seasonality of production for various zones in the Boston market. . . . The nearby producer does not create, nor is he expected to carry, the same proportion of surplus as does the more uneven producers located further distant from the market. It may be said that rating plans would be a more selective way of rewarding even production. But rating plans are anathema to many producers in northern New England . . . The other factor, on which there was extensive testimony in Boston at the time the present system of location differentials was adopted, was that of historical price relationships. . . . Worcester producers have continued over the years, to receive blended prices closely in line or somewhat higher over the price paid to nearby producers in Boston, . . . higher than could be explained on the basis of transportation costs on up-country supplies." (R. 630-34).

Mr. Swonger acknowledged that the purpose of the differential was to prevent nearby producers from sharing the surplus of the market (R. 633). He explained market-wide pooling and said that in dealer-pool type of marketing arrangement, "the high-use dealer is in a position to discount the Class I price through excessive charges for trucking and other devices" (R. 89). He maintained that this would not happen under equalization or market-wide pooling, and therefore "Worcester producers would also benefit from the fact that all of the Class I sales were accounted for, and

paid for at the Class I price, which is not now the case." (R. 647). He did not explain these self-contradictory statements in respect to nearby producers receiving a "higher price" for their milk under such circumstances or the effect of the same on the statistics furnished concerning prices. Mr. Swonger was unaware that the NEMPA voted for its producers (R. 101), but he was aware that such association did not consult its members (R. 92-95).

Clifton E. Whitney, representing Northern Farms Cooperative and the Maine Dairymen's Association, testified concerning the artificial and arbitrary barrier that the nearby differential erected around the fluid milk market. (R. 402-03). He stated that there was no justification for the location differentials, in that

> "Nearness to market is compensated for by the difference in freight rates as reflected in Section 7(c) . . . Claim is often made that producers nearest a market produce more evenly . . . We maintain that evenness of seasonal production should be encouraged by a pattern of seasonal pricing. Such a pattern of seasonal pricing is recommended in the proposed order under Section 7(a)(5). If further adjustment is necessary, it should be done through seasonal pricing. The mere fact that a producer is within a certain number of miles of the market or that he lives in a certain town is no assurance that he produces evenly or will continue to produce evenly in the year ahead." (R. 411).

Mr. Whitney stated that handlers should pay for any extra value or quality, and he maintained that a producer can still get an additional premium for milk over the minimum prices without the necessity for such location differential. He stated that because they exist without justification in the Boston and New York orders is no reason to extend them but to draw the line. Mr. Whitney quoted Sec. 608c(5)(B)(ii) of the Act pertaining to authorized adjustments to the uniform price required by the Act, and stated that it was obviously an impossibility for such a dif-

ferential to have been "customarily applied" because it could only arise under a market-wide pool. "Worcester has not been operating under a market-wide pool whereby those inside a given line receive such a differential". (R. 412-14). Mr. Whitney cited the case of *Brannan* v. *Stark*, 342 U.S. 451, which held that small deductions from the market-wide or equalization pool were not authorized under the Act, and he asked if these deductions from the pool for no service or value were authorized under the same. Mr. Whitney also testified that Boston producers had supplied the Worcester market during short supply, but they had to carry the surplus by themselves for years. (R. 419-20). He also maintained that some of their producers would be deprived of their market in the Worcester area, and that the history of the Boston market is not ground for the history of the Worcester market, a fact brought out by other witnesses.

Mr. Myron R. Laipson, a dealer, stated that 15% of the producers from out-of-State have served the Worcester market for years and should not be excluded by this "severe penalty". He maintained that the differential in the Boston market made it impossible for distant producers and his organization to compete, that the differential had not been customarily applied, and that the nearby producer was already compensated for his location by other valid differentials. (R. 702-05).

Hearing Examiner Gifford also commented that a handler could still pay a premium over the minimum price, and stated that "I have seen them paying eighty cents over the blend price for milk to make cheese out of. They can pay premiums. There is no question about that. What we are considering is whether this is a fair minimum price or not, not a maximum. That is up to a contract between the dealer and the producer". (R. 140).

Mr. Chester W. Smith, representing United Farmers of New England, New England Cooperative Dairy, Bethel

Cooperative Dairy, Shelburne Cooperative Dairy, Mount Mansfield Cooperative Creamery, Grand Isle Cooperative Creamery, Richmond Cooperative Creamery and Milton Cooperative Dairy, testified that producers outside the 30 mile nearby area are going to be taxed 35 cents per cwt. off their price for the purpose of adding about 11 cents on to other producers' prices within the 30 miles. (R. 446-47). He stated that under the Boston order the distant producer is taxed a much smaller amount, due to the fact that so many pay to so few, whereas under the Worcester order it would be reversed. (R. 469).

Mr. Paul Hawley testified that "The original proposal for the paragraph and the order, of course, is to effect a barrier in favor of certain areas or groups of producers, as I see it, and it is not a desirable provision in that it established almost as a necessity a close, tight supply situation in the Worcester market". (R. 424). He repeated the testimony of Mr. Whitney, (R. 428), concerning the fact that Boston served the Worcester market in periods of short supply but the latter disliked sharing the burden of the surplus of the market. (R. 370).

Mr. John R. Sibley, of Spencer, Mass., testified in favor of the differential, but his statistics were shown to be of doubtful validity. (R. 52-57).

A number of Vermont producers testified that they were part of the Worcester market and should not be excluded by the differential or a difference in price. (R. 200-221).

Summary of Promulgation Hearing Record for Springfield, Mass., Milk Order

The defendant's Decision regarding promulgation of the Springfield, Massachusetts, Federal milk order is set forth in 14 Federal Register 7085, November 23, 1949, and that and the Worcester Decision published the same date are hereinafter discussed together because of the virtually identical language and findings made in both Decisions.

George Fuller, president of United Dairy System, Deerfield, Mass., testified that he had petitioned for a Federal order because milk from Southern Vermont is in competition with Springfield milk and the Massachusetts Milk Control Board has been unable to control interstate milk. He stated that dealers can go into Southern Vermont and buy milk in a competitive position between New York and Boston order, rather than purchase milk at prices of the Massachusetts Board, and that a blended price in the Springfield market would be better than disorderly marketing conditions that come from such an unregulated market. (R. 20-23).

Ellsworth Bell, previously identified, testified but quoted for the most part from the report of July 1, 1949, of the New England Regional Milk Price Committee, which listed the factors that enter into prices paid to producers. He maintained that prices to producers supplying secondary markets should be kept in line with prices to producers supplying primary markets. (R. 29). Edmund Burke, representing General Ice Cream Company and Mallory Dairy Products, asked Mr. Bell what the legal basis is for such location differentials, other than that they are in the Boston order, but Mr. Bell is unable to answer this question. (R. 54-56).

Mr. C. W. Swonger, previously identified, testified that "what is needed is a type of regulation that would price all the milk in the market on a uniform basis regardless of its source, and remove the incentive to drop local producers in order to obtain cheaper milk for outside unregulated sources". (R. 84). Mr. Swonger also stated that "It is not possible to operate a market under a type of regulation that prices only about 60 per cent of the milk. Unless a means can be developed to regulate all the milk in the market on a uniform basis, the price structure will collapse, and local producers will be left without a market". (R. 94). He stated that "We have proposed a federal order, market

pool, with location differentials similar to Boston". (R. 97). He testified that New York order had a location differential, and stated that "We are not familiar with the circumstances and conditions that led to establishment of the present system in New York, but it would appear to us that the economic advantages that arise from proximity to the market apply to the location of the producer's farm rather than the plant to which he delivers his milk". He maintained that nearby producers supplying the Springfield market are entitled to expect a price comparable with nearby producers in Boston (R. 99-101), but he did not offer any explanation for this observation in respect to his prior testimony that the nearby producer would lose his market without federal regulation.

Mr. Clifton Whitney, previously identified, gave the same testimony in opposition to the location differential as that which he gave during the Worcester promulgation hearing. (R. 234-242).

Mr. Carol Hotaling, a Columbia County, New York, producer representing 36 other dairy farmers, testified that they had delivered to the Springfield market for the last 14 years. He stated that they should get such a differential, since they had to pay 50 cents per cwt. in transportation charges in delivering their milk. (R. 246-53). Other New York State producers testified to like effect, stating that they had always received the same price for their delivered milk as nearby Springfield producers, less the transportation charges, none being aware of any additional price or differential to nearby producers. (R. 256-270). Numerous dairy farmers from the Pawlet, Vermont, areas also testified against the location differential, stating that they had supplied the Springfield market for years, that their production was even and adjusted thereto, that they had incurred an added investment with the thought of supplying such market at all times, that they were not approved for other markets, that they would have difficulty finding

another market if such location differential excluded them from the Springfield market, that 70% to 80% of the "nearby" producers would receive such differential payments from 20% to 30% of the producers supplying the market, and that the "nearby" producers had no "vested interest" in the Springfield market. (R. 271-293).

Chester W. Smith, previously identified, did not take a position on the location differential as such, but stated that a question arises as to whether they are allowed under the Act. (R. 331).

Mr. Swonger repeated his testimony verbatim that he furnished in the Worcester hearing regarding alleged justification for the location differential, although he did admit that his figures showed that nearby Springfield producers received less than nearby Boston producers in the 1930s' and early 1940s'. (R. 456-64). However, he later maintained the nearby Springfield prices were closely in line with nearby Boston producers, as justification for a location differential (R. 478-79). He stated it was also justified because of "nearness to market" and maintenance of a Class I or fluid milk supply over the years. (R. 488). He estimated that 69% of the producers would be in the 46 cents zone, 12% in the 23 cents zone, and 19% outside of the favored zones. (R. 484-85). He acknowledged that many of the producers who had been supplying the Springfield market in past years would not be in the preferred locations and that therefore it did not include all "historical" producers. (R. 496-502). He was extremely evasive under cross-examination, however, in that regard, whether the producers left out of the preferred location zones had received the same price as those producers in such zones over the years (R. 505-13), and he did not know if over the years any "customary differential" was paid to those in the 46¢ zone different from those in the 23¢ zone who would actually lose money under the proposed arrangement. He acknowledged that his "figures" related to Massachusetts

vs. non-Massachusetts producers, rather than to nearby Springfield producers. (R. 525-26). He was unable to justify his usage of the term "historical relationships" when cross-examined concerning the fact that many dairy farmers who had supplied the Springfield market with direct delivered milk over the years were excluded from both differential areas and many were included in the 23 cents zone who had previously received the same direct delivered Springfield price for their milk. (R. 498-513). He was extremely evasive under cross-examination (R. 492-93, 505-13, 525), and contradicted himself many times, presumably being unaware that a higher price was paid for direct delivered milk over that received at country receiving stations because of the saving in handling charges, which higher price is attributable to the direct delivery or market differential authorized by the Act. He stated that ' It seems to us that the strongest case that can be made for location differentials in all of this area is that these producers have continued to receive a higher price than could be explained on the basis of transportation costs only which has been clearly in line with the price to nearby producers in Boston, and that this condition has continued to exist even with no regulation over out-of-state supplies". (R. 478).

Howard A. Putnam, testifying for Mallory Milk Products of Pawlet, Vt., and F. B. Mallory, Inc., of Springfield, Mass., testified that the location differential might cause them to go out of business because of loss of their producers, despite the fact that his company had just built a large receiving plant at Pawlet, Vt., in reliance upon supplying the Springfield market. (R. 551). He stated that they pay their producers a blended price and that Dr. Swonger was incorrect in his figures, a fact which Dr. Swonger appears to acknowledge several times. (R. 551, 557, 562).

Irving E. Sutin, representing the General Ice Cream Corp. of Rochester, N. Y., stated as follows:

"The past experience in the Springfield market fails to indicate any justification for these proposed differentials. A producer whose milk is delivered to a milk plant in the marketing area has been receiving the same price as other producers delivering to the same plant regardless of the location of his farm or the other farms from which the milk was shipped to the same plant. To provide differentials listed in the proposed Order would be a radical departure from accepted practice in the Springfield market. The proposed differentials would not only give premiums to producers whose farms are located in the cities and towns named and whose milk is delivered directly to plants in Springfield but would also be paid to those producers located in those cities and towns whose milk is delivered to country plants. This, likewise, is a departure from the marketing practices which have been followed in the Springfield market.

Adoption of the proposed differentials would impose without any justification a penalty and hardship on those producers who have been delivering milk to Springfield plants for many years. . . ." (R. 533-34).

Mr. Sutin maintained that payment, if any, should be made to those whose milk is delivered directly from their farms to plants in the marketing area, stating that "In this way producers who have historically delivered milk to the Springfield market would be given same preference . . ." He further stated that:

"It does seem that the proposal of 46 cents and 23 cents farm differential of the NEMPA would be illegal since it is contrary to the AAA of 1937. The Act provides for differentials "customarily applied by handlers subject to such order". No farm differentials had ever been paid in the Springfield market." (R. 537).

Mr. Sutin also stated at page 538 of the record:

"The other twenty per cent of producers would be penalized to pay for the gravy that the others would enjoy; or, if not penalized the alternative would be that they would be driven from the market. In effect, a

Federal marketing order of the Federal Government would have the tendency to make second class citizens of those producers who did not happen to be located in the preferential area arbitrarily drawn." (R. 538).

Mr. Sutin indicated that the only basis for such a differential is direct delivery (R. 541), a separate differential under the Order (Mass.-R.I.).

In his findings in the Decision of November 23, 1949, for the Springfield market order, the Secretary found that:

"(a) . . . Producers supplying milk to the Springfield market are located in Massachusetts, Vermont, New York, New Hampshire and Connecticut. Witnesses estimated the number of producers outside the State of Massachusetts from 30 to 40 percent of the total number supplying the market. . . .".

"(b) . . . The record shows that conditions exist in the Springfield market which have resulted in a loss of market for several producers. . . . The unsettling conditions which are disrupting the Springfield market result from the opportunity on the part of milk handlers to purchase milk from producers outside Massachusetts wholly on an unregulated price basis whereas the handlers who purchase milk from Massachusetts producers are required to make payments to producers in accordance with a classified price plan enforced by the Massachusetts Milk Control Board. . . .".

The Secretary further found that the lack of a uniform market-wide price plan for all producers supplying the market is a disruptive factor, and he referred to the great variance in prices paid by handlers in this regard. He also found that "A marketing order is needed in the area to assure producers of a market for their milk at reasonable and uniform prices".

The Secretary found in respect to payments to producers, 14 F.R. 7089, as follows:

"The percentage of milk utilized by individual handlers in Class I varies so widely that prices to producers have differed under an individual handler type pool by over $1.00 per hundredweight. Provision should be made for a market-wide type of pool in order that all producers delivering milk to all handlers may receive a uniform price for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered. . . .

The uniform price paid to producers should reflect differentials for the location at which the milk is delivered and for the customary market practice of paying somewhat higher prices to producers located near the sales area. Differentials which vary with the location of the plant at which a producer delivers his milk have been in common use in the Springfield and other New England markets. . . . Most of the dairy farms in Massachusetts are close to urban centers. This probably explains why prices to Massachusetts farmers for milk sold wholesale average considerably more than the prices paid to Vermont farmers. This difference cannot be attributable to transportation costs alone. . . .".

The Secretary referred to the alleged opportunity of nearby producers to retail their milk, and he stated that producers in this area "are accustomed to receiving a price which reflects the Boston differential payment". He dismissed the fact that other producers outside the preferred zones had received premiums or the Springfield price less hauling charges, stating that "a price difference of that amount cannot be expected to be maintained in a period of adequate milk supplies". (14 F.R. 7089-90). No attempt was made to distinguish the apparent inconsistencies in the Decision's findings or to justify the differential under the Act or on any mutually applied basis. No mention was made concerning a direct delivery differential or payment on that basis to all producers who performed that service. No attempt was made to justify the differential payments from out of the uniform price or market-wide equalization pool rather than by handlers,

nor was there any finding or conclusion concerning the requirement or manner of effectuating the purpose and policy of the Act.

Virtually verbatim language was used by the Secretary in his Decision of the same date promulgating the Worcester milk order.

The Secretary elaborated somewhat upon the statements in the Springfield and Worcester decisions when he promulgated the Southeastern New England milk order, his Decision appearing in the Federal Register (23 F.R. 8225) on October 24, 1958. He stated as follows in his Decision:

> "The Southeastern New England market is an interstate market encompassing all of the State of Rhode Island and a substantial area in Southeastern Massachusetts. . . . More than one third of the fluid requirements for the Southeastern New England area originates from sources outside the States of Rhode Island, Massachusetts and Connecticut. . . . The situation in both Fall River and New Bedford has continued to deteriorate as handlers, seeking to avail themselves of milk supplies at the most advantageous price, have tended to look to up-country unregulated supplies. . . As a result local producers have had difficulties in maintaining regular outlets for their production. This condition is most serious in the Fall River market where the several associations of producers whose members are the predominant suppliers of the market have a substantial volume of milk which is not accepted by handlers. Much of this milk is sold at manufacturing milk prices even though the local supply is inadequate to meet the market demands." (23 Fed. Reg. 8225-26).
>
> ". . . The same pressures which have led to a loss of market for many Fall River producers are applicable to the New Bedford area . . . . it is likely that if no action is taken handlers will seek lower priced un-

regulated milk supplies. The situation in the Rhode Island part of the market is substantially similar to that in the Fall River-New Bedford area. . . . The increase in available milk supplies generally and the fact that milk is readily available from upcountry sources at prices approximating the Boston blend has provided a strong incentive for handlers to drop local producers in favor of cheaper sources of supply. Less than one third of the fluid requirements of Rhode Island dealers are supplied by Rhode Island dairy farmers. . . . Several of the larger handlers in the market customarily have secured a lesser proportion of their necessary supplies from local producers than have other handlers. The buying advantage that these handlers have had on their purchases of outside milk has prompted other handlers to drop local producers in favor of sources of supply at upcountry points also. . . . Relatively large quantities of local producer milk were dropped during the latter months of 1957 and 1958; in some cases entire pickup routes were dropped at one time. . . . The Rhode Island Milk Control Board in the latter part of 1957 initiated an allocation program which was intended to assure a market for local producers . . . Unregulated, lower-priced milk continues to move into the market in even greater quantities than before the allocation scheme was initiated.

"Registered Rhode Island producers have enjoyed a preferential market over an extended period of years. The allocation program and the procedure employed by the responsible officials of the State in issuing permits for importation of nonregistered milk have tended to maintain such preferential market to the detriment of other dairy farmers whose production is an essential part of the market supply. . . .

"A market structure which grants a preferential price to registered Rhode Island producers cannot

provide a stable market for such producers over any extended period while handlers have the opportunity to gain a procurement advantage through the use of lower priced milk from upcountry sources. The State, as a practical matter, cannot effectively regulate milk which moves across state lines, and while local dealers may voluntarily reduce imports of outside milk temporarily to gain support from local producers, it is inevitable that the incentives for using unregulated milk will result in a loss of milk market for local producers.

"The Southeastern New England market is a deficit market and must rely upon sources of supply in Northern New England and New York to supplement the local supply. Recent developments in bulk tank cooling and transportation facilities have contributed to efficiencies which permit greater flexibility of handling operations at greater distances from the consumption center in Southeastern New England. . . . Premiums over the blend price which may be offered by local handlers making "upcountry" purchases have a detrimental effect upon adjacent by inducing producers to leave cooperative associations and markets with which they have maintained association for a number of years to deliver to handlers for this market." (23 Fed. Reg. 8226-27). . . .

"Historically, dairy farmers in the States of Massachusetts, Rhode Island and Connecticut, because of their location with reference to the large population concentrations of New England have disposed of a substantially larger percentage of their production for fluid uses than have the dairy farmers in the upcountry area. Hence nearby producers have been able to realize a price higher in relation to more distant producers than can be accounted for by the advantage in the cost of transportation to market. Under the marketwide pooling herein proposed and without

some adjustment mechanism the nearby producer, notwithstanding, would be paid on the basis of the average utilization of all milk on the milkshed rather than according to the utilization of his milk. Under a regulated market, however, he obtains the benefit of an established Class I price which may be higher than in the absence of regulation, and has assurance that his milk will not be displaced by cheap, unregulated milk from more distant sources. The distant producer also benefits from an established Class I price, and by the fact that he gains a larger share of the fluid market than is likely without marketwide equalization. The use of a nearby differential will return to nearby producers a somewhat greater share of the Class I price than they would otherwise obtain through marketwide pooling. Moreover such a differential will tend to provide returns to both nearby and upcountry producers more nearly in line with their prospective returns without marketwide equalization. The scheme of nearby farm location differentials and the amount thereof is identical with that employed in the adjacent Federal markets." (23 Fed. Reg. 8238).

The foregoing language is almost identical to that used in the Secretary's decision promulgating the New York-New Jersey farm location differential in 1957, 22 Fed. Reg. 4213-14, a copy of which is found in the Supplemental Appendix filed in the *Blair* case and which is also filed herein with the briefs of that case as an exhibit.

Respectfully submitted,

CHARLES PATRICK RYAN
EDWARD J. RYAN
Attorneys for Plaintiffs.

* * * * * * * * * *

Senate Report No. 565
75th Cong., 1st Ses.s, May 13, 1937

MARKETING AGREEMENTS AND ORDERS

* * *

EXPLANATION OF AMENDMENTS

These amendments to H. R. 5722 are proposed to enable the producers of honey-bees and of fruits and vegetables for canning to develop marketing agreement and order programs in those cases where such programs would be beneficial to producers and would have their approval in accordance with the terms of the act. Under the original Agricultural Adjustment Act it was possible for producers of these commodities to have marketing agreement and license programs, but honey-bees and canning commodities were excluded in the amendments to the Agricultural Adjustment Act made in August 1935.

These amendments have been requested by producers and their representatives. Under the terms of the bill no order can be made effective with respect to these and other commodities unless the Secretary of Agriculture finds that the program has the approval of two-thirds of the producers. Under the circumstances there appears to be no logical reason for excluding producers of honey-bees and canning crops from obtaining the benefits provided in the bill.

EXPLANATION OF BILL

The principal purposes of this bill are to reenact the marketing agreement and order provisions of the Agricultural Adjustment Act, to make certain changes in respect to the basis to be used in marketing agreements and orders for fixing prices to be paid milk producers, and to authorize mediation and arbitration of certain disputes between the producers and handlers of milk.

NECESSITY FOR REENACTMENT OF THE MARKETING AGREEMENT AND ORDER PROVISIONS

Certain district courts have interpreted the Hoosac Mills decision, which invalidated the processing-tax and production-control provisions of the Agricultural Adjustment Act, as also rendering the marketing agreement and order provisions of the act invalid. These programs, as authorized by the act and as administered by the Secretary of Agriculture, are designed to improve the purchasing power of farmers by encouraging orderly marketing through the regulation of interstate commerce. These marketing programs are not for the purpose of controlling agricultural production and, in fact, they do not control the production of any agricultural commodity. Furthermore, under the provisions of the act such programs were contemplated to operate separately and independently and not as a part of, or in conjunction with the production-control programs.

While to date the question of the constitutionality of such regulation of interstate commerce has not been considered by the Supreme Court, the interpretation placed upon the Hoosac Mills decision by certain lower courts has rendered such programs temporarily ineffective in the districts to which such decisions apply; because these courts maintain that the Hoosac Mills decision invalidated the entire act, including this type of regulation in spite of the fact that the present act contains a separable provision.

The immediate reenactment of the marketing agreement and order provisions of the Agricultural Adjustment Act would remove the technical basis upon which such adverse decisions rest and enable producers to receive the benefits of such programs without the necessity of waiting until these cases have been finally acted upon by the Supreme Court.

MILK PRICES

Subsection (18) added to section 8 (c) of the Agricultural Adjustment Act by section 2 (f) of the bill provides a more workable standard for the guidance of the Secretary in fixing milk prices in an order issued for a particular marketing area. Milk is the only agricultural commodity for which prices are permitted to be fixed in orders issued under the Agricultural Adjustment Act and the Secretary is required to use the purchasing power of milk as his guide in the issuance of orders. This provision of the bill requires the Secretary, if an order or marketing agreement is to include fixed prices, to ascertain the prices which will be equivalent in purchasing power to prices of milk in the base period according to sections 2 and 8e of the Agricultural Adjustment Act. In addition, if he finds these ascertained prices are not reasonable in view of the local price of feeds, the available supply of feeds and other economic conditions which affect the supply of and the demand for milk in a particular marketing area, the Secretary shall fix such prices as will reflect these conditions, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. The peculiar nature of milk as a commodity and the power of requesting prices of this commodity have been set forth by the Supreme Court in its decision in the case of *Nebbia* v. *New York* (1934), 291 U. S. 502.

The reasoning there set forth can be applied with equal force to the regulation of interstate commerce in milk. The intricate problems of the milk industry as described in the above cited opinion, explain the use of the several pooling and price plans authorized for inclusion in milk orders. Their effectiveness depends upon their adaptability to conditions affecting each marketing area and upon their adjustment from time to time to meet changing conditions. The Secretary is to use the same standard in adjusting prices as is to be used in the fixing of prices initially in the regulation of any marketing area.

MEDIATION AND ARBITRATION

Section 3 of the bill authorizes the Secretary of Agriculture, upon the request of milk cooperatives, to mediate, and upon the approval of all parties, to arbitrate disputes between the cooperatives and the handlers of milk in a particular market. The matters which may be arbitrated are confined to those involving terms and conditions such as might be included in orders under the order provisions of the act. While this action grants certain exemptions and immunities from the antitrust laws to the parties requesting mediation or arbitration and with respect to the proceedings, agreements, or awards which follow, public interest is amply protected by the requirement that this authority is to be exercised only when the Secretary is persuaded that the declared policy of the act will be effectuated thereby. It is believed that through mediation and arbitration, the services of the Secretary of Agriculture and the Dairy Section of the Agricultural Adjustment Administration will be available to a greater and more effective degree in developing a sound working relationship between

* * *

House Report No. 468
75th Cong., 1st Sess., May 13, 1937

Reasons for Reenacting the Marketing Agreement and Order Provisions

The Supreme Court in *United States* v. *Butler* ((1936), 297 U. S. 1), declared invalid the provisions of the Agricultural Adjustment Act authorizing production adjustment programs involving processing taxes and benefit payments. The question as to whether Congress has the constitutional power to regulate interstate and foreign commerce in agricultural commodities through marketing agreements and orders as provided in the Agricultural Adjustment Act was not before the court and has not yet been determined by the court. Lower Federal court decisions have differed on the question, and in two cases courts have held that the marketing agreement and order provisions were inseparable from the production adjustment provisions which fell in the *Butler case*. As a consequence of these decisions, doubt has been cast on the validity of all the agreements and orders, and producers of milk, particularly in New England, are now suffering from a seriously demoralized price situation.

The committee is of the opinion that Congress has the power to regulate interstate and foreign commerce in agricultural commodities in the manner provided in the act, and that an examination of the text and organization of the act and of its history shows these provisions are and were intended to be effective independently of the production adjustment provisions. The committee believes that this view will have the support of the Supreme Court.

Whatever may be the case, in order that whatever decision which may ultimately be rendered with respect to these provisions may turn on their constitutional validity rather than on their separability, and in order that express authority be given to enter into new agreements and orders in the areas in which they are necessary, it is highly desirable that these provisions be reenacted.

Provisions Reenacted

Section 1 of the bill reenacts all marketing agreement and order provisions of the Agricultural Adjustment Act, as amended, as well as certain other provisions not relating to production adjustments. The specific reenacted provisions and a description of their general subject matter are set forth in section 1 of the bill, and their text is set forth in the comparative print accompanying this report, and do not require further explanation. The sections and parts of sections of the Agricultural Adjustment Act not set forth are neither reenacted nor repealed. It is to be noted that section 1 relates only to provisions which are a part of the Agricultural Adjustment Act itself. Such provisions relating to agriculture as were enacted in the 1935 amendments (Public 320) or in other legislation but which were not specifically a

part of the Agricultural Adjustment Act are not involved in any respect in this bill. Section 32, relating to removal of surpluses, and section 37, relating to elimination of diseased cattle, of that act are of this character.

Amendments to Reenacted Provisions

Section 2 (a) of the bill amends section 1 of the Agricultural Adjustment Act. Section 1 in its present form contains a statement of the acute economic emergency which existed in 1933, and emphasizes the wide disparity at that time between prices of all farm commodities and the prices of other commodities. This general disparity does not exist to the same extent at the present time, but continuing and constantly recurring disparities do exist in the case of individual farm commodities, accompanying and caused by disruption of orderly marketing in the channels of interstate and foreign commerce. The proposed amendment contains a recognition of this disruption of interstate commerce, and of the national public interest resulting therefrom.

The amendments to the Agricultural Adjustment Act made by sections 2 (b), 2 (c), 2 (d), 2 (e), and 2 (j), respectively, of the bill remove from sections 2, 8 (a) (6), 8 (c) (5), 8 (c) (6), and 12 (a), respectively, all reference to production of agricultural commodities and to the adjustment program. These amendments are made for the purpose of indicating that the marketing agreement and order provisions have no connection with, nor have they as their objective, production control.

Section 2 (f) of the bill adds to section 8 (c) of the Agricultural Adjustment Act two new subsections. The first deals with milk prices. Milk is the only commodity for which producer prices for interstate milk may be fixed by the Secretary of Agriculture through orders under the Agricultural Adjustment Act. The necessity for price regulation in the case of milk has also been recognized by many States which have established milk boards to fix producer prices for intrastate milk, and the validity of such State regulation has been upheld by the Supreme Court (*Nebbia* v. *New York* (1934), 291 U. S. 502). Marketing agreements and orders for milk ordinarily involve pooling and price plans which, to be effective, must continue with the up and down swings of economic factors which relate to price. The proposed amendment recognizes this, and provides that if the Secretary finds that the national parity price for milk does not adequately reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area to which the marketing agreement or order relates, he shall fix such prices as will reflect such factors, insure a sufficient quantity of pure wholesome milk, and be in the public interest. The proposed amendment further provides that as the Secretary finds necessary on account of changed circumstances, he shall make adjustments in such prices. Such adjustments are to be made in accordance with the same standards as are provided for the initial fixing of prices under this subsection.

[Filed Aug. 25, 1967]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUSSELL ALLEN, et al.,
Plaintiffs,

v. Civil Action No. 3379-66

ORVILLE L. FREEMAN,
Secretary of Agriculture
of the United States,
Defendant,

FREDERICK T. ZUBER, et al.,
Interveners,

STATE OF CONNECTICUT,
Amicus Curiae.

MEMORANDUM OF THE STATE OF CONNECTICUT AS AMICUS CURIAE IN SUPPORT OF MOTION OF INTERVENING DEFENDANTS FREDERICK T. ZUBER, ET AL. FOR PRESERVATION OF THE STATUS QUO

* * *

* * * In any case, the far farmers, if their position is upheld, will receive the funds. They are thus protected if a stay is granted; if a stay is not granted, there will be no remedy for the damage done the "nearby" farmers.

* * *

[Filed Jan. 9, 1967]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

RUSSELL ALLEN, et al.,
Plaintiffs,

v.

Civil Action No. 3379-66

ORVILLE L. FREEMAN,
Secretary of Agriculture
of the United States,
Defendant,

NEW ENGLAND MILK PRODUCERS'
ASSOCIATION, et al.,
Intervenors.

INTERVENORS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

* * *

Respectfully submitted,

/s/ Lawrence D. Hollman

/s/ Carlyle C Ring, Jr.
(per LDH)

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January 9, 1967

[Filed Jan. 11, 1967]

[Caption Omitted in Printing]

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs are five dairy farmers located in Vermont who bring this action purportedly as a class action for the benefit of all other persons in their class who are similarly situated and for themselves as individuals. Plaintiffs seek to enjoin the defendant, the Secretary of Agriculture and his agent, the Market Administrator, from administering the Massachusetts-Rhode Island Milk Marketing Order (7 CFR Part 1001) in such a way as to give effect to the farm location differentials or "nearby" differentials contained in the Order (Section 1001.72). In the alternative, plaintiffs seek to have the monies normally payable to "nearby" producers by virtue of the differentials held in escrow pending the outcome of the litigation.

As indicated in the affidavits of Herbert L. Forest, Director of the Dairy Division of the United States Department of Agriculture, and of Ruben Hall, Government Exhibits 1 and 2:

(a) The adverse effect to the public interest and injury to other producers outweighs the *de minimis* injury to the individual plaintiffs, who do not truly represent the class; and

(b) Plaintiffs have made no strong showing of the likelihood that they will prevail on the merits.

The Adverse Effect to the Public Interest and Injury to Other Producers Outweigh the *De Minimis* Injury to the Individual Plaintiffs, who do not Truly Represent the Class

Any injury which would be suffered by the plaintiffs in the event of temporarily withholding payment of the "nearby differentials would be *de minimis* when compared with the immediate and irreparable injury that would result to the "nearby

producers" and to the public interest if the "nearby" differential payments were withheld. The Government's exhibits show that "nearby" producers need the money represented by these differentials in order to pay for their current operating expenses. It represents a substantial part of their working capital. These differentials represent approximately 7.8 per cent of the total monthly return for milk of 2,181 "nearby" producers in the 46¢ zone. These producers comprise approximately 24½ percent of all the producers in the market and 98 percent of all "nearby" producers. To withhold such a large percent of the working capital of these "nearby" producers would cause all of them to suffer irreparable injury. The "nearby" differential amounts to approximately $148 per month to each of 98 percent of "nearby" producers on an average. This amount represents a substantial part of the entire labor income of such producers.

Should plaintiffs in this action ultimately prevail what they would receive is a windfall in terms of an increase in the basic blend price. Escrow of these "nearby" differentials would not immediately benefit plaintiffs' working capital position, or their economic position generally, because it would be unavailable during the time of the escrow. During the term of any escrow of these funds neither plaintiffs nor the "nearby" producers would have these monies available for their current operations.

The "nearby" producers for over 30 years have received these differentials. Their production, land values, facilities, dairy herds and labor are all geared to an overall return for their milk which, in substantial part, is represented by these payments. Plaintiffs, on the other hand, have not, either before the advent of the federal milk marketing orders program, or since that time, received the additional values for their milk which would be represented by throwing amount of these differentials into the total blend price. Compared to the "nearby" producers, plaintiffs' production has not been and is not now dependent on receiving any part of the amounts reflected in the differentials.

Should the plaintiffs ultimately prevail in this action, the effect on the blend price would be an increase of approximately 12¢ per cwt. This means that plaintiffs would receive an additional 12¢ per cwt. for their milk. The "nearby" producers would suffer a decrease in their returns of 34¢ and 11¢, respectively. However, should these "nearby" differential payments be held in escrow, or should a temporary injunction be issued, the "nearby" producers *immediate* cash return would be reduced by 46¢ and 23¢ per cwt., respectively. The immediate adverse effect on the "nearby" producers is four times as great as any ultimate benefit that might accrue the plaintiffs. No immediate benefit or injury would be suffered by plaintiffs.

The effect of a temporary injunction, or an escrow of the "nearby" differentials would not be to preserve the *status quo* but to destroy it. Either of these actions would have the effect of misaligning the entire pricing structure of the Order and effecting a substantial immediate amendment to the Order. This would disrupt the *status quo* which has existed in the regulation for over 30 years, and in the market for a much longer period.

Exhibits to Statement of Material Facts Filed February 24, 1967

[Caption omitted in printing]

EXCERPTS FROM BRIEF ON BEHALF OF NEW ENGLAND MILK PRODUCERS' ASSOCIATION, CONNECTICUT MILK PRODUCERS ASSOCIATION, INC., LOCAL DAIRYMEN'S COOPERATIVE ASSOCIATION, INC., AND PRODUCERS DAIRY CO. AS AMICI CURIAE

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether, under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601) *et seq.*), the Secretary of Agriculture is authorized to provide in milk marketing orders for the payment of a differential to nearby producers.

2. Whether the Secretary's 1957 decision to provide for nearby differentials in the New York-New Jersey Milk Marketing Order has adequate record support.

* * *

[22] * * * of such milk by the individual handler to whom it is delivered" (7 U.S.C. 608c(5)(B)(ii)), Congress authorized adjustments to the uniform price, including an adjustment predicated upon "the locations at which delivery of such milk is made." 7 U.S.C. 608c(5)(B)(c). We do not understand the appellants to take issue with the propriety of location differentials in general. Instead, they argue (1) that, although promulgated as adjustments based upon location, the nearby differential is in fact an unauthorized utilization differential, and (2) that, even if it is a location differential, it is rendered invalid by virtue of its arbitrary and discriminatory application. Neither contention is at all meritorious.

A. *The Nearby Differential Is an Adjustment Based upon Location.*

1. Authorization for the promulgation of location differentials had its inception in the 1935 amendments to the Agricultural Adjustment Act of 1933. See 49 Stat. 750, 753. By way of explanation, the Committee Reports state:

> The market differential is a differential which is given to the producer to compensate him for delivering his milk to a city market instead of to a country plant. These differentials vary with the markets and cannot be qualified as a "location" differential, because of the fact that location is usually determined on the distance from a primary market whereas market differentials are usually paid in secondary markets. [H. Rept. No. 1241, 74th Cong., 1st Sess., p. 10; S. Rept. No. 1011, 74th Cong., 1st Sess., p. 10.]

From the foregoing we think it evident that Congress intended by location differentials to compensate producers for the added [23] value of their milk which is attributable to his "distance from a primary market." That, precisely, is the objective of the "nearby differential." A producer's eligibility for a nearby differential turns exclusively upon the distance of his farm from the marketing center of the area embraced within the New York - New Jersey Order. The 120-mile nearby differential area has been divided into eight zones: 1-50 miles, 51-60, 61-70, 71-80, 81-90, 91-100, 101-110, and 111-120. The farther away the zone, the less the differential to which producers within that zone are entitled. There are two exceptions to the strict distance test. Farms in a limited number of counties have been placed within zones which do not reflect their actual distance from the basing points; but even here location is critical. 7 C.F.R. 1002.71(b)(4). And, producers who qualify geographically for nearby differentials lose that differential if they deliver to plants outside of the nearby area.[14]

Admittedly, the extent of the differential is also made dependent upon the percentage of fluid utilization in the market area. But that fact, as we show, *infra*, pp. 25-27, does not convert * * *

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[14]There is an exception to this exclusion. Nearby producers still will be eligible for differentials for deliveries made outside the geographical limits of the nearby area providing the delivery is made to a plant within the 140-mile zone or, if made to plants in specified counties, within the 150-mile zone. 7 C.F.R. 1002.71(b)(5).

* * * [26] by *all* participating handlers. In short, location, not utilization is the critical criterion.

Indeed, as promulgated in 1938, the order provided for adjustments in favor of milk produced near the market without regard to marketwide utilization. See 3 F.R. 1945, 2100. With the expansion in 1957 of the New York order to embrace the areas of New Jersey and upstate New York the utilization factor was added. Having determined that producers nearby the market center should continue to receive a differential—the reasonableness of this determination is demonstrated below (*infra* pp. 39-46)—the Secretary was desirous of incorporating a safeguard for the protection of non-nearby producers. Nearby differentials were considered justified principally because nearby producers historically enjoyed a greater percentage of the marketwide Class I sales (hence they received more for their milk than did producers located more distant to the center of consumption); inclusion of their sales within the blend results, therefore, in an increase of the uniform price. The nearby differential is intended to compensate partially those producers for the added value they bring into the pool for the benefit, in the main, of non-nearby producers. However, the Secretary correctly realized that as Class I utilization increases marketwide the amount of benefit conferred upon the pool by nearby producers declines. Hence, he set the nearby differential at rates varying inversely with the percentage of Class I milk in the pool * * *

[29] * * *

The New York Milk Marketing Order, notwithstanding its early vintage, was not the first to recognize the need for nearby differentials; such adjustments were incorporated in the first Greater Boston Marketing Order promulgated on February 7, 1936—less than six months after the enactment of the amendments to the Agricultural Adjustment Act which permitted adjustments for "the locations at which delivery of such milk is made." See 2 F.R. 1331. In relevant part that order provided (2 F.R. 1333):

> SEC. 4. *Location Differentials.*—The payments to be made to producers by handlers pursuant to para-

graph 1 of section 1 of this article shall be subject to differentials as follows:

1. With respect to milk delivered by a producer to a handler's plant located more than 40 miles from the State House in Boston, there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots of milk in 40-quart cans, to Boston from the zone of location of the handler's plant.

2. With respect to milk delivered by a producer to a handler's plant, located not more than 40 miles from the State House in Boston, there shall be added 18 cents per hundredweight.

3. With respect to milk delivered by a producer whose farm is located more than 40 miles, but not more than 80 miles, from the State House in Boston, there shall be added 23 cents per hundredweight.

4. With respect to milk delivered by a producer whose farm is located not more than 40 miles from the State House in Boston, there shall be added 46 cents per hundredweight unless such addition gives a result greater than $3.19, in which event there shall be added an amount which will give a result of $3.19.

Paragraphs 1 and 2 are comparable to the transportation differential provided for in 7 C.F.R. 1002.71(a); paragraphs 3 and 4 are the equivalent of the nearby differentials provided for in 7 C.F.R. 1002.71(b).

[30] Indeed, the nearby differential provisions of the 1936 Boston and 1957 New York-New Jersey orders are, in substance, identical in purpose and effect: (1) Both orders authorize payments to producers based solely upon the *location of the producers farm*, the only distinction being that under the Boston order there was but one basing point (the State House in Boston); the New York-New Jersey order has several basing points. (2) Under both orders the nearby differential payment is made out of the producer's pool and results in a reduc-

tion of the uniform blend price that would otherwise be paid to non-nearby producers. (3) Both orders divide the nearby area into zones with the producers situated in the closer zones being entitled to larger adjustments. The only differences in this connection (except, of course, the rates of payment) relate to the number of zones and the methods used in zoning producer farms. The Boston Order provided for two zones (0-40 miles and 40-80 miles from the State House); the New York order provides for eight zones. In addition, under the New York order, farms in certain counties are placed within zones which do not reflect their actual mileage from a basing point. But the essential similarity remains; both orders establish zones and provide for differential payments which reflect the proximity of the zone to the basing point. (4) Finally, both orders employ a utilization factor with the object of reducing, or eliminating, the nearby differential when market-wide fluid utilization is high. Under the Boston Order the differential to producers whose farms were located in the 0-40 [31] mile zone was to be "46 cents per hundredweight unless such addition gives a result greater than $3.19, in which event there shall be added an amount which will give a result of $3.19." 2 F.R. 1333. Under the New York Order, the rates of payment decrease as the percentage of marketwide Class I utilization increases; there is no nearby differential when 80% or more of all utilization in the market is in fluid form. Both orders recognized that the benefit nearby producers confer upon the market, and in turn upon all producers servicing that market through a higher blend price, decreases as fluid utilization increases marketwide.

Thus, dating almost to the very enactment of 7 U.S.C. 608c(5)(B)(c) the Secretary has construed that provision as permitting the very type of nearby differential which the appellants would have this Court declare unauthorized. It is, of course, axiomatic that such a long-standing contemporaneous administrative construction of the Section by the official charged with its administration is entitled to great weight. *Federal Housing Administration v. The Darlington, Inc.*, 358 U.S. 84, 90; *Norwegian Nitrogen Co. v. United States*, 288

U.S. 294, 315; *United States v. American Trucking Associations*, 310 U.S. 534, 549.

Finally, while we think that 7 U.S.C. 608c(5)(B)(c) plainly permits differential payments to nearby producers, the authority to promulgate such differentials is certainly to be found in 7 U.S.C. 608c(7)(D), which authorizes such other terms and [32] conditions in addition to those expressly stated as are "incidental to, and not inconsistent with the terms and conditions specified in subsections (5)-(7) * * *." That provision reflects congressional recognition of the fact that in devising a particular form of regulation the Secretary must be afforded wide discretion. "A variety of plans * * * may well conform to the statutory standards. But the choice among permissive plans is necessarily the Secretary's; he is the agency entrusted by Congress to make the choice." *Secretary of Agriculture v. Central Roig Co.*, 338 U.S. 604, 614. See also *Stark v. Wickard*, 321 U.S. 288, 210; *Mitchell v. Budd*, 350 U.S. 473, 480; *Queensboro Farm Products v. Wickard*, 137 F.2d 969, 977 (C.A. 2). Even if the nearby differentials provided for in the 1957 New York and 1936 Boston orders are not squarely authorized by 7 U.S.C. 608c(5)(B)(c), they certainly are "incidental to, and not inconsistent with" that provision. 7 U.S.C. 608c(7)(D).

2. As we have shown, the nearby differential provided for in the 1957 New York Order, in substance, is identical to a similar provision in the 1936 Boston Order—both provisions were promulgated on the basis of the same statutory provision; both make the location of the producer's farm the critical eligibility requirement; both finance the differential out of the marketwide pool; and both vary the differential with the marketwide value of all milk. This identity is of particular significance since the 1936 Boston Order has received both judicial approval and congressional ratification.

* * *

The nearby differential provision considered in *Green Valley* was contained in the original Boston Order effective February 9, 1936; as such it "expressly [was] ratified, legalized and confirmed."

C. THE DECISION TO PROVIDE A NEARBY DIFFERENTIAL WAS PREDICATED ON A REASONABLE EXERCISE OF ADMINISTRATIVE JUDGMENT: IN NO WISE ARE NON-NEARBY PRODUCERS ARBITRARILY DISCRIMINATED AGAINST

The appellants' principal contention appears to be not that nearby differentials violate the statute, but that they result in an arbitrary and discriminatory benefit to nearby producers at the expense of non-nearby producers (App. Br. pp. 34, 42-46). In Point II (*infra* pp. 39-46) we show that the Secretary's decision to continue nearby differentials in the New York milk marketing area is amply justified by the facts adduced at the promulgation hearing. We show here that, assuming the propriety of those findings, nearby differentials in general are reasonable and in no wise discriminatory. To do this we need but look to the Secretary's rationale (22 F.R. 4213-4214):

> Historically, the percentage of the milk produced nearest to metropolitan New York–New Jersey which is used for fluid purposes is higher than the percentage of more distant production which is used in fluid form. Over 92 percent of the milk received in 1956 at pool plants within 125 miles was for fluid use. Nearby producers have been able to get a price higher in relation to more distant producers than can be accounted for by the advantage in the cost of transportation to market. When milk is pooled on a marketwide basis, the nearby producer is paid on the basis of the average utilization of all milk in the milkshed rather than according to the utilization of his milk. Together with equalization, however, he obtains the benefit of an established Class I price which may be higher than in the absence of regulation, and is protected to some extent from the loss of a market because of competition of cheap milk from more distant sources. The distant producer also benefits from an established Class I price, and in addition gains a larger share of the fluid market than is likely without equalization.

> In order to provide benefits of more nearly equal value both to nearby and distant producers, some form of special location differential is needed, the effect of which is to give the nearby producer a somewhat greater share of the high-priced Class I-A milk than he would obtain through marketwide pooling without such a differential, but a smaller share than he would be expected to obtain under an order with handler pools.

The Secretary's judgment to provide for nearby differentials in the 1936 Boston Order was predicated on very similar findings; findings which in the First Circuit's view established the reasonableness of that location differential. *Green Valley Creamery v. United States,* 108 F.2d 342, 346.

Plainly, therefore, if the Secretary's findings have substantial evidentiary support it is frivolous to suggest, as do the appellants (App. Br. p. 42), that "this nearby differential is devoid of any element of service of value and the appellee has suggested none;" that non-nearby producers are required to relinquish, in favor of nearby producers, higher blend prices without receiving a *quid pro quo* (App. Br. pp. 42-46). Nearby producers are afforded a differential for the very reason that their participation in the pool inures to their detriment while benefiting non-nearby producers who thereby enjoy a blend price that is computed on the basis of a higher fluid utilization. * * *

* * *

[Filed Aug. 18, 1967]

UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE
WASHINGTON

I hereby certify, pursuant to Title 28, United States Code, Section 1733, that each attached document is a true and correct copy of a document in my official custody as hereinafter described:

In re: Proposed Amendments to the Greater Boston, Springfield and Worchester, Massachusetts, Southern New England, and Connecticut Marketing Areas Milk Orders - Docket Nos. A0 14-A 35, A0 203-A 17, A0 204-A 17, A0 302-A 9 and A0 305-A 9

1. Page 2647 of the transcript of hearing held January 23, 1963, at Hartford, Connecticut, with respect to the above proceeding.

2. Pages 3928 through 3930 of the transcript of hearing held February 14, 1963, at Boston, Massachusetts, with respect to the above proceeding.

3. Pages 4375 and 4376 of the transcript of hearing held February 15, 1963, at Boston, Massachusetts, with respect to the above proceeding.

In testimony whereof I have hereunto caused the seal of the Department of Agriculture to be affixed and my name subscribed in the District of Columbia, this 17th day of August, 1967.

/s/ Orville L. Freeman
Secretary

By /s/ Eugene R. Meyer
Hearing Clerk

(Signed pursuant to the authority of 26 F.R. 12166)

Sec. 15 (10-64)

[2647] order marketing areas.

Benefits of government regulation

In the absence of government regulation of market milk prices during the past several years, prices received by producers for milk would be lower than they currently are in New England and other markets in the Northeastern states. A precise demonstration does not seem to be necessary to establish this fact. Government regulation has maintained prices to producers at a level more favorable than would have been the situation in the absence of such regulation.

When government regulation establishes orderly marketing and favorable prices, the question arises as to which producers should benefit from the regulations. In the absence of formal criteria for answering this question, it seems logical to assume that the producers historically furnishing milk for the market should receive this benefit. Producers shipping to the Connecticut market in receiving benefit from government regulation have not created problems for other producers by increasing their production beyond the needs of their market.

Between the prewar period, 1938-40, and 1961, annual milk production increased less in Connecticut than in any of the other Northeastern states, except New Hampshire, Massachusetts, and Rhode Island. As compared with Pennsylvania, New York and Vermont, the difference in rate * * *

* * *

[3928] EXAMINER HOLSTEIN: Off the record.

MR. HALL: No, on the record.

EXAMINER HOLSTEIN: I am not going to let you prove what the law is. That is not in issue here.

THE WITNESS: If it will save time I will withdraw the statement that we have a pretty good bonding law.

MR. HALL: I am not saying we don't but I am saying it is not what you say it is.

THE WITNESS: What I meant was I think it has worked fairly well over the years.

EXAMINER HOLSTEIN: That is all, Mr. Hall.

MR. HALL: Just a moment, Mr. Hearing Examiner.

EXAMINER HOLSTEIN: Yes, take your time.

By Mr. Hall:

Q. Do you feel, Mr. Garelick, that the existence of the Federal regulations is of benefit to the non member? A. Of benefit to the non member?

Q. Yes. A. The existence of regulations where?

Q. In any of these New England markets where they are presently in effect? A. Let me say that I don't think it is of benefit to a lot of non members in relation to the amount of regulations in New England prior to the southeast order.

Q. Would you mind repeating that? I don't quite [3929] understand. A I don't think it is a benefit to a lot of non members if we compare it to their position in 1958.

Q. Is it your view that the existence of the federal order in southeastern New England prejudices a number of producers? A. Definitely. Prejudiced some in favor and some against.

Q. Do the non members in any great numbers attend the hearings where proposals for amendment to the federal orders are being considered? A. I don't think they do anymore or any less than producers that belong to cooperatives.

Q. Producers that belong to cooperatives have representatives here? A. That is your opinion.

. . . Laughter . . .

Q. Whether you like the representatives or not is not important. They have representatives. A I have no quarrel socially with the representatives. My quarrel is whether they truly represent them.

Q. Do you think that the producers would be better off if they appeared themselves representing themselves?

MR. CHERNAUSKAS: Mr. Examiner, this is a very nice interchange, but I think we are not really helping [3930] the record.

EXAMINER HOLSTEIN: I will sustain that.

MR. CARROLL: May not like the answer.

MR. HALL: The answers don't concern me too much. I think that is all.

EXAMINER HOLSTEIN: Any further questions?

Mr. Sykes.

By Mr. Sykes:

Q. Mr. Garelick, is it your position that there is no choice as to the expenditures which a non member must make in the case of the non member marketing deductions and it is your position that there should be some choice? A. It is my position that they should not have to pay for a service they don't want, especially when it has been voted in by people who don't pay for the service.

Q. Now with reference to the calibration of bulk tank in the Commonwealth, you agree this is a function of the Division of Standards in the Bureau of Labor, and Industry? A. I don't think so.

Q. Are you familiar with the fact that the law specifies that recalibration shall be done every two years? A. I understand that there was a law recently passed within the past couple of years that more funds were appropriated and this is why we are getting this recalibration.

Q. Do you also understand that the law provides that * * *

* * *

[4375] MR. HALL: A statement as attorney for New England Milk Producers Association, Northern Farms, Maine Dairymen's Association and on behalf of the Cooperative Dairy Service, I would like to register each of those organizations as opposed to Proposal No. 57. We feel that that involves legal questions which are not appropriate to be discussed at this hearing but which we will discuss in brief.

EXAMINER HOLSTEIN: Thank you, sir.

MR. AMON: Does that statement allow me to ask one queston?

EXAMINER HOLSTEIN: You can ask him anything you want off the record.

MR. AMON: I have been doing that for too long a period of time. I want it on the record. I don't care about the fact he is not sworn.

EXAMINER HOLSTEIN: A statement made from the floor is not subject to cross examination.

MR. AMON: I wish to ask whether or not any poll of the membership of any of the organization that he has referred to has been taken authorizing the same statement that he has made.

EXAMINER HOLSTEIN: Do you care to answer that question, Mr. Hall?

MR. HALL: We have not taken a poll of the individual members of any of these organizations, any of the producer [4376] members of these organizations.

EXAMINER HOLSTEIN: All right, sir.

Mr. Lee, I understand you have a statement you wish to make or testimony you wish to give.

MR. LEE: Yes.

EXAMINER HOLSTEIN: Let the record show that Mr. Lee has been previously sworn.

Whereupon,

JAMES D. LEE

was called as a witness and, having been previously duly sworn, testified as follows:

DIRECT TESTIMONY

THE WITNESS: I wish to put in some supplementary information in opposition to Proposals 23 and 24 which simply takes the form of introducing some additional material from the Market Administrator's Review.

It will be recalled that I testified that the Administrator's Marketing Service Program was eminently successful and I referred to the checking of the calibration of non-members' bulk tanks. I wish to have official notice taken of the following articles which have appeared in issues of the Review.

MR. MAHONY: Are these issues already in evidence?

EXAMINER HOLSTEIN: Do you wish to offer them as exhibits or ask for official notice to be taken?

* * *

[Filed June 8, 1967]

[Caption Omitted in Printing]

PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO PROPOSED ORDER GRANTING MOTION FOR SUMMARY JUDGMENT & JUDGMENT FOR INJUNCTIVE RELIEF.

The plaintiffs, by their counsel, say as follows in reply to the defendant's Opposition to the plaintiffs' proposed order granting the plaintiffs' motion for summary judgment and judgment for declaratory and injunctive relief:

1. This suit requested a declaratory judgment and a permanent injunction, and the decision of the Court will probably be appealed by the defendant if any basis therefor can be ascertained by defendant. Under such circumstances, it is respectfully submitted that the order proposed by the plaintiffs is not only appropriate but would be of assistance to the parties and the Court of Appeals.

2. The defendant and the former applicants for intervention, Frederick T. Zuber, et al., are of the view that a successful appeal of the Court's decision on the motion for summary judgment and of the Order of this Court of March 21, 1967, denying Frederick T. Zuber, et al., leave to intervene herein as defendants, might be possible if the order and judgment to be entered herein failed to state any findings and consisted of a mere recital of the requested relief as proposed by defendant. *The defendant and the former applicants for intervention, Frederick T. Zuber, et al., would then immediately claim that the Court did not consider all of the points and arguments raised by them in granting the plaintiffs' motion for summary judgment.* The fact that this Court referred to the case of *Blair v. Freeman*, 370 F.2d 229, as dispositive authority for the granting of the plaintiffs' motion for summary judgment and does not mean that the Court did not consider the unsubstantial arguments advanced by defendant and said former applicants for intervention in granting the plaintiffs' motion. The defendant and said former applicants did raise some minor contentions that were not raised in *Blair*, but the same

were necessarily considered by the Court. The plaintiffs' proposed order merely brings out such fact, for it is a foregone conclusion that both the defendant and said former applicants would maintain that the Court's citation of the *Blair* case meant that the points and arguments not raised in that case were ignored in granting the plaintiffs' motion. This tactic is apparent from the face of the defendant's Opposition, as well as from the other pleadings herein.

3. The defendant objects to the inclusion in said Order and Judgment of any reference to the orders of this Court and to those of the Court of Appeals. It is obvious that the prior orders of this Court do have a bearing on the motion for summary judgment or the matters embraced therein would not have been raised by both defendant and plaintiffs for the Court's consideration. One example will suffice to illustrate this obvious fact. The defendant raised various defenses relating to primary jurisdiction, exhaustion of administrative remedies, etc., in his prior motion to hold the Court proceedings in abeyance and for remand to the defendant Secretary for administrative determinations. The defendant himself referred to these prior orders and motions of defendant on page one of his "Memorandum of Points and Authorities In Support Of Defendant's Opposition To Plaintiffs' Motion For Summary Judgment", and he repeated many of the arguments that had already been heard by the Court and ruled on in the case. If these matters and orders have "nothing to do with the summary judgment", as stated by defendant in his Opposition to plaintiffs' proposed order, it is submitted that he should not have brought them up himself or else should provide the real explanation for the reversal of his position in this regard. It is evident that the purpose of objection to mention of these orders in the Court's order and judgment to be entered herein is that it would preclude defendant and the former applicants from intervention from maintaining that this Court considered only the *Blair* case in granting the plaintiffs' motion for summary judgment. Even though the arguments advanced by defendant and said applicants in these proceedings were inaccurate and insubstantial, the Court of Appeals might still

remand the case for consideration of such matters if the defendant was to utilize the argument on appeal that this Court did not consider the other arguments of defendant and said applicants–such as the nearby differential being a "production" differential, that said applicants' rights to due process were violated, etc. Consequently, the plaintiffs' proposed order and judgment specifically referred to many of such arguments and also stated that the Court had fully considered all arguments and all matters embraced in the motion for summary judgment.

The reason that the plaintiffs' proposed order and judgment referred to the orders of the Court of Appeals is also self-evident. The aforesaid applicants for intervention, Frederick T. Zuber, et al., appealed the denial of their motion to the Court of Appeals, and that Court denied their motion for summary reversal of the said Order of this Court of March 21, 1967, on the 5th day of May, 1967. The Court of Appeals had the entire record of this case before it in making its decision, and its Order stated that the denial of applicants' motion for summary reversal was without prejudice "to such action as the appellants may be advised to take following final judgment in the District Court *where so far as presently appears there will have been accorded to those appellants by such judgment such recognition of their claims as they may be entitled to receive*; and thereafter this order shall not be a bar to the said appellants renewing their motion before this Court *upon a showing of the respects in which the Secretary of Agriculture shall have failed to represent the interests asserted by these appellants*". (emphasis supplied).

The plaintiffs' proposed order and judgment refers to said Order of the Court of Appeals because it is material and important for it to do so, in order to show that said former applicants' claims continued to receive consideration by the Court in respect to the granting of plaintiffs' motion. The Court's recognition of the adequacy of representation by defendant is set forth for the same reason. Otherwise, both the defendant and the said former applicants would seize upon such lack of reference thereto as reason for reversal of both

the Order of this Court of March 21, 1967 denying intervention to said former applicants and of the present granting of plaintiffs' motion for summary judgment. Both would allege that the citation of *Blair* without reference to the claims or arguments of the former applicants and without reference to adequacy of representation would mean that the Court did not consider anything else but the *Blair* case. Both would argue that this possibility existed, and the case might be sent back for rehearing with resultant continued and aggravated injury to the plaintiffs and their class, many of whom are being forced out of business by virtue of inadequate returns for their labor and who could stay in business with the increased uniform price that would exist by virtue of invalidation of the nearby differential. In addition, their counsel might request withdrawal from the case in such event, due to the fact that it has been impossible to work on any other cases during the past six months (with one exception) because of the time taken by these proceedings. These are the reasons for the defendant's opposition to inclusion of these important matters in the proposed order and judgment. It is evident that the Court did consider such matters and the defendant and said former applicants should not be allowed to utilize such intended tactic to delay the final disposition of this case. Resort to such procedural devices or tactics is necessary because of the fact that neither defendant or said former applicants have any real defense on the merits, and that the element of delay will accord them their only opportunity of jointly prevailing in this case.

The plaintiffs' proposed order and judgment refers to the fact that the plaintiffs offered to allow the said former applicants for intervention to file a brief *amicus curiae* herein if they had any position or argument that they desired to place before the Court to assure consideration of the same. This was offered after the Court's denial of said applicants' motion for intervention on March 21, 1967, and again after the denial of their motion for summary reversal of this court's order by the Court of Appeals on May 5, 1967, and a formal Consent was filed herein by plaintiffs authorizing the filing of

such brief *amicus curiae*. In answer to the said applicants' argument that they were unable to file opposing points and authorities to plaintiffs' motion for summary judgment at the time required therefor, the plaintiffs furnished to said applicants a designation of all pages of the administrative record wherein the nearby differential was referred to, although it was obvious that the claim of lack of such record from defendant was not a bona fide ground for delay. These facts are of material significance in showing that the said applicants had adequate opportunity to present their own case, and that the defendant and said former applicants should not be allowed an opportunity to claim by agreement that defendant did not adequately represent said applicants herein.

Instead of availing themselves of such opportunities, a brief *amicus curiae* was filed herein with plaintiffs consent by the Commonwealth of Massachusetts in behalf of nearby producers, i.e., the said former applicants for intervention. The same local law firm is listed on said brief, through one of its attorneys, as represented the former applicants for intervention, although the attorney whose name appears thereon is different from those whose names appear on the papers filed in behalf of said applicants for intervention. In addition, the same law firm represented the New England Milk Producers Association herein when it attempted to intervene in these proceedings. The said applicants have, in effect, utilized the opportunity to file a brief *amicus curiae* in this case through the medium of the Commonwealth of Massachusetts and this fact illustrates that the said applicants for intervention presented every claim or defense conceivable for the consideration of the Court. This is of material significance in respect to adequacy of representation and consideration of said applicants' claims in respect to the motion for summary judgment, and it would prevent defendant and said applicants from claiming that the defendant did not adequately represent applicants or that the Court did not consider applicants' claims. The plaintiffs therefore believe that such inclusion in the proposed order and judgment is entirely appropriate. They further believe that reference to modification of the prelimi-

nary injunction at the suggestion of plaintiffs to allow disbursement of those monies of said applicants and all of the other nearby milk producers is also appropriate, in that it bears on the claims of the said applicants and the Court's consideration of the same.

The reference to the present status of the said applicant's appeal in the Court of Appeals is also appropriate, as is the proposed order provision that delays distribution of the escrowed funds to plaintiffs and their class until a final decision by the Court of Appeals on denial of their motion to intervene. Such order provision protects applicants and evidences consideration by the Court of their claims as mentioned in the Order of the Circuit Court of May 5, 1967.

The defendant's objection to the findings proposed concerning the nearby differential's operation and its basis and relationship to the illegal criterion of use of fluid milk is also groundless. The defendant's own brief in the *Blair* case, quoted in part by plaintiffs' counsel during the argument on the motion for summary judgment, acknowledges that the New York-New Jersey milk order and the Greater Boston milk order, the precedent for the Massachusetts-Rhode Island milk order, contained identical nearby differential provisions "in purpose and effect". Said brief acknowledges that "both orders employ a utilization factor", and it is not disputed that the plaintiffs' proposed order and judgment sets forth an accurate and necessary statement in this respect or that it is inaccurate in any manner. The defendant's objections are therefore predicated on the obvious basis, though undisclosed, that an appeal and subsequent remand to this Court will be facilitated if the defendant's proposed order and judgment is entered, in that defendant will then be able to argue that this Court failed to consider anything but the *Blair* decision in granting the plaintiffs' motion for summary judgment. As previously stated, that case is dispositive authority for this case, but this does not mean that the other contentions or defenses have not been considered by the Court. The plaintiffs have met each of said contentions and arguments of the defendant

and applicants for intervention with irrebutable and prevailing argument, and the proposed order and judgment submitted by the plaintiffs is in accordance with the prior orders and findings of the Court. The plaintiffs further submit that the Court of Appeals will also recognize the lack of any valid argument or defense to the plaintiffs' motion if an appeal is taken by defendant, and the plaintiffs' proposed order and judgment is appropriate to the prompt and final consideration of any such appeal. In respect to the defendant's objection that reference to prior orders of the Court is an unnecessary or inappropriate provision in the order and judgment, the Court is also respectfully referred to Rule 23(c)(3) of the FRCP, which provides that "The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class". The action was maintained as a class action under the aforesaid Rule subdivision by formal order of this Court, and reference to the same and the findings set forth in plaintiffs' proposed order and judgment are not only appropriate but necessary. The entire proposed order and judgment is a logical and accurate recital of those matters necessary and appropriate for the granting of the requested relief and preservation of the same from unwarranted and improper attack upon appeal.

4. The defendant has not furnished the monthly report pertaining to milk delivered during April, 1967, and the proposed order provision regarding the furnishing of such reports containing information as to the escrowed funds is therefore still necessary.

The defendant's proposed Judgment does not contain any provision concerning the entitlement of plaintiffs and their class to the escrowed funds, even though the same have emanated entirely from the pockets of plaintiffs and their class and even though the class of nearby producers represented by defendant have received their escrowed funds through modification of the preliminary injunction. In fact, the defendant's proposed Judgment studiously avoids any mention of plaintiffs' class and ignores the requirements of Rule 23 and the

prior Order of this Court authorizing the maintenance of this suit as a class action. As previously stated, Rule 23(c)(3) requires that plaintiffs' class be included and described in the judgment and this is the reason the findings concerning the same of the Preliminary Injunction and the Order authorizing the maintenance of the suit as a class action are set forth to some degree in the proposed order and judgment.

The defendant's proposed provision concerning enjoining of the nearby farm location differential is not as detailed and specific as that required under Rule 65(d), FRCP, and it is submitted that the proposal of plaintiffs and their class is more appropriate to assure that defendant does not promulgate a like differential provision under a different guise or name.

The proposed Judgment of defendant does not state that an appeal will be taken from the order and judgment of this Court, but refers to the judgment being stayed "pending the resolution of any appellate proceedings which *might* be prosecuted by the Government. . .". It is submitted that Rule 62, FRCP, is applicable in respect to a stay of the operation and enforcement of the judgment when an appeal is taken, but that the plaintiffs and their class should not be further injured upon a contingency as to whether an appeal shall be taken by defendant. In view of the decision of the Circuit Court in *Blair*, it is apparent that there is no reason to stay the judgment, and this is especially true if no appeal is to be taken by defendant. The "nearby" producers and the "non-nearby" producers would be receiving the same uniform price for their milk if the judgment went into effect, and it is evident that only the plaintiffs and their class would continue to sustain irreparable injury if the judgment was stayed.

In the *Blair* case, the defendant represented that the case would be heard in the District Court within two weeks and the plaintiffs withdrew their request for a restraining order and preliminary injunction that related to escrow of the nearby differential payments upon the basis of such represen-

tation. Instead, the defendant delayed for 7 months before the case was heard in the District Court, and it subsequently opposed a motion for escrow of such monies filed in the Circuit Court during the pendency of the appeal, resulting in the loss of millions of dollars to plaintiffs and their class. It opposed the motion of the plaintiffs and their class filed in the Circuit Court *subsequent* to that Court's decision invalidating the differential unless the defendant was granted 90, rather than the normal 30 days, for consideration of whether to seek certiorari. The defendant was not concerned with the equity of the situation at that time, and he argued that the public interest required payment of such monies rather than escrowing of the same. The "nearby" producers would have been protected by the escrowing of such differential payments, as well as the non-nearby producers in *Blair*, but the defendant chose to pay out such monies to the producers who were not entitled thereto. Consequently, plaintiffs and their class respectfully request that their own monies be paid to them under the judgment, particularly in view of the decision of the Circuit Court in *Blair* and since such monies are solely those of the plaintiffs and their class and are required to preclude additional irreparable injury to them. The funds presently in escrow are subject to further order of the Court in respect to distribution to plaintiffs and their class pending the determination of the appeal of Frederick T. Zuber, et al., applicants for intervention, but the stay of judgment requested by the defendant should not be granted under the present circumstances without a showing by defendant of adequate grounds therefor or that an appeal will be taken by defendant.

Wherefore, the plaintiffs and their class respectfully request that their proposed order and judgment be entered herein, or that they be allowed to present the said judgment and the findings of fact and conclusions of law as separate papers but in conformity with the combined paper previously presented to the Court.

[Subscription Omitted in Printing]

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Supreme Court of the United States

No. 861 ---- , *October Term, 19* 68

Frederick T. Zuber, et al.,

Petitioners,

v.

Russell Allen et al.

ORDER ALLOWING CERTIORARI. Filed April 7 --------- , 19 69.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 1076 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Marshall took no part in the consideration or decision of this petition.